

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

Arlosoroff may dispute this assessment of his examination, had the Committee allowed the examination to be videotaped per Mr. Mickell's right under Florida law, the extent of the examination would have been documented.

Finally, Mr. Anillo was advised that **Mr. Mickell objected to a second neuropsychological evaluation so close in time to the previous one** by Dr. Mark Todd because the psychological literature is clear that **additional neuropsychological testing in such a short period of time poses a great danger to invalid results due to the Retest Effect** (often referred to as the "Test Retest Effect"). Research has shown that undergoing a second examination so close in time to the first evaluation is cause for concern due to the substantial practice effect or even "test-wise" behavior (he is now quite familiar with the testing process). The Disability Claims Committee was asked to reassess its request for additional neuropsychological testing, given the dangers of invalidity in the test results. Unfortunately, the Committee ignored this letter and Mr. Mickell attended both Medical Examinations on August 19<sup>th</sup> and August 20<sup>th</sup>, 2014.

Upon his return from the August Medical Examinations, Mr. Mickell voiced his frustration with the brief amount of time each of the physicians spent with him. Dr. Macciocchi incorrectly asserted that Mr. Mickell was working with a friend three days a week and appears to have based his opinion, at least in part, on that incorrect understanding. Mr. Mickell is not sure why Dr. Macciocchi would misrepresent what was discussed during the very brief exam. On September 11, 2014 a letter was faxed to both Mr. Anillo and Mr. Scott which included a statement prepared by Mr. Mickell (with the help of his girlfriend) which stated the following:<sup>15</sup>

*On June 17, 2014 I saw Dr. Alosoroff at the NFL's request. The entire experience which included x-rays of both knees, ankles, shoulders, neck, right hip and my back took about one hour. This included the time spent taking the x-rays, time spent talking to Dr. Alosoroff about my medical history, and a very brief examination which lasted no more than a few minutes. He performed the same type of examination that the team doctors and trainers performed on me during the games, on the sidelines. They were sending me to play when I was injured, only to be told right before the last game of the season, that I need to have surgery on the same prior concerns, (this was done to me, in both San Diego and Kansas City). I felt like the doctors had only the teams' best interest in mind. I am experiencing the same things with these Dr's, and again, **it seems that everyone has the NFL's interest in mind and not the PLAYERS!** I was told by Dr. Alosoroff that I could not record or video the visit with him. I was then told by the NFL's attorney that I must go to Atlanta to be examined by two more doctors for the injuries sustained to my brain. Because of commitments to my children, I was unable to attend the exams on August 4<sup>th</sup> and 5<sup>th</sup> (I was given just over 2 weeks' notice that I would need to fly to Atlanta and remain there for two nights and two*

<sup>15</sup> A copy of the Mr. Mickell's Statement is attached to this Appeal as Exhibit "14".

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

*full days) but I did go there from August 18<sup>th</sup> to August 20<sup>th</sup> for an evaluation with a neurologist on August 19<sup>th</sup>, and then a Neuropsychologist the next day. I was so upset after the examinations on August 19<sup>th</sup>, that I contacted my attorney to let her know what a waste of time it was. I was in and out of the office within one hour and spent no more than 15 to 20 minutes in direct contact with the doctor. He asked me about my medical history and I was given a few very short tests to take. The tests were nowhere near as detailed or long as those given by Dr. Todd. The next morning I was seen by the Neuropsychologist, again for a very brief time. He spent very little time trying to understand my problems and I was there less than one hour. One of the reports incorrectly stated that I worked three days a week with a friend. That is not an accurate statement. I do not work, and I do not earn money. I can't work or keep a job because I am unable to physically handle any type of work due to my injuries.*

*I tried and obtained employment in 2012 at FHI. This was my only year working since leaving the NFL. I was placed on a 3-4 work schedule due to my injuries. I have no idea how any of these physicians can claim to understand my medical condition or comment on my ability to function because they spent so little time with me, and they did not review my medical records or speak with my doctors.*

On September 15, 2014, the undersigned received via 2-day Federal Express mail the September 8, 2014 Denial Letter which was dated September 8, 2014. Clearly this letter was sent subsequent to the receipt of the September 11, 2014 correspondence and approximately 5 days after it was dated. The Denial Letter cited to Plan Sections 5.1, 5.2(a) and 5.2(b) as the relevant Plan provisions and provided the content of each section. The *Discussion* section of the Denial Letter which provided the rationale for the denial stated, in total, the following:

*On September 8, 2014, the Committee denied your application for T&P benefits because it determined that you do not meet the standard set forth in Plan section 5.2(a). Specifically, the Committee noted that Plan neutral orthopedist Chaim Arlosoroff, M.D., Plan neutral neurologist – Barry J. McCasland, M.D., and Plan neutral neuro-psychologist – Stephen M. Macciocchi, PhD., indicate that you are employable. The Committee also noted that you have not presented evidence that you receive Social Security disability benefits. The Committee concluded that you are not totally permanently disabled within the meaning of the Plan, and denied your application on this basis.*

Mr. Mickell was provided 180 days from the receipt of the Denial Letter (until March 14, 2015) to submit his Appeal.

RBM 05/14/2015



MICKELL-0943

A1059

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

### Social Security Disability

Mr. Mickell applied for Social Security Disability Benefits (SSDI) but was denied on August 29, 2014 due only to the fact he was ineligible because *he* had not worked long enough to qualify for disability benefits.<sup>16</sup> He was NOT denied because he was not considered disabled, but only because he lacked the requisite Social Security credits. Mr. Mickell's only employment was with the NFL, for which he played less than ten years. In order to qualify for SSDI benefits he had to have worked for ten years total paying in FICA taxes and worked five of the last ten years. Because Mr. Mickell did not work for 10 years and had not worked for 5 of the last 10 years, he was denied as ineligible not due to a finding that he was not disabled.

### The Committee's Denial is Based on Flawed and Unreasoned Medical Reviews

#### Neutral Examination by Chaim Arlosoroff, M.D.

As indicated above, Mr. Mickell was scheduled for an *Independent Medical Review* on June 17, 2014 with Dr. Chaim Arlosoroff, an orthopedic surgeon.<sup>17</sup> Mr. Mickell's medical records were sent to Ms. Anderson with a request that the Committee provide this information to Dr. Arlosoroff for his review. Dr. Arlosoroff's Physician's Report indicated that *there were no records for review. No x-rays or MRIs*. Clearly these records were never provided to him. Instead, Dr. Arlosoroff's opinion is based on a very brief examination of Mr. Mickell, during which he spent less than 20 minutes with him and performed only a cursory physical examination.

Dr. Arlosoroff's report incorrectly asserts that he performed a comprehensive whole body orthopaedic exam. However, Mr. Mickell vehemently disputes that assertion and advised in writing that the exam was very brief and certainly not comprehensive. Had the Committee allowed Mr. Mickell to videotape the IME, as is his legal right in Florida, this issue could have been clarified. Dr. Arlosoroff also took several x-rays, although x-rays do not show damage to muscle or tissues (and we agree that Mr. Mickell does not have any broken bones); and thus his reliance on an abbreviated examination and x-rays alone is insufficient and meaningless. Not surprisingly, Dr. Arlosoroff found that Mr. Mickell is not totally disabled to the extent that he is substantially unable to engage in any occupation for remuneration or profit.

<sup>16</sup> A copy of the letter form the Social Security Administration is attached to this Appeal as Exhibit "15".

<sup>17</sup> A copy of Dr. Arlosoroff's Report is attached to this Appeal as Exhibit "16".



Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

**Neutral Examination by Barry J. McCasland, M.D.**

Despite the fact that Mr. Mickell lives in South Florida, an area bursting with board certified physicians and renowned medical facilities, The NFL sent him to Atlanta Georgia for a *neutral* examination with a neurologist, Dr. Barry McCasland.<sup>18</sup> While Mr. Mickell understands the NFL has the right to send him to whatever physician they choose, it is curious that they chose to spend the time and money necessary to have him examined by a neurologist in another state.

Mr. Mickell left this examination extremely upset by the lack of time Dr. McCasland spent with him and his nonchalant attitude. Dr. McCasland briefly listened to Mr. Mickell describe his medical history and then gave him a few very short tests. He appeared uninterested in understanding Mr. Mickell's medical conditions and limitations and his opinion is based only on limited testing and a hasty examination. While the Report by Dr. McCasland implies that he performed a more comprehensive physical examination, as Mr. Mickell stated in writing, Dr. McCasland spent a total of 15 minutes with Mr. Mickell, including the time spent going over his medical history, symptoms, restrictions and limitations. Dr. McCasland did note that Mr. Mickell appeared to be depressed and scored below normal on the Montreal Cognitive Assessment Test (which took only a few minutes to complete). He also reviewed Dr. Todd's neuropsychological report and focused on the fact that a single validity test (one of many) that indicated a questionable finding. Other than that, Dr. McCasland chose not to discuss or comment on Dr. Todd's findings, made no effort to refute them, and provided no analysis of his own. Instead, he listed his Final Clinical Impressions – Chronic Headache Disorder with mild headache burden; very mild cognitive impairment; significant depression and anxiety disorder which accounts for or contributes to the cognitive impairment; and syphilis, treated. In response to the questions included on the Plan's written questionnaire, Dr. McCasland responded that there are *no limits from neurologist standpoint – premorbid estimates of function are not consistent with academic professions*. That is the extent of his analysis. There is nothing to support that statement, other than the fact that he may want to perform more examinations on behalf of the NFL Retirement Plan.

**Neuropsychological Assessment by Stephen N. Macciocchi, Ph.D.**

On August 20, 2014, Mr. Mickell attended another very brief examination with neuropsychologist Stephen Macciocchi.<sup>19</sup> Dr. Macciocchi incorrectly documented that Mr. Mickell was working with a friend 3 days a week in a job that was not cognitively demanding. Not only is this inaccurate and not included by any other neutral or treating physician, but the Committee was advised of this inaccuracy immediately upon my receipt of Dr. Macciocchi's report. The fact that Dr. Macciocchi misrepresented the information conveyed to him by Mr. Mickell and appears to have relied on this inaccuracy, in part, as the basis for his opinion that Mr. Mickell can work renders his entire report questionable. Moreover, Dr. Macciocchi

<sup>18</sup> A copy of Dr. McCasland's Report is attached to this Appeal as Exhibit "17".

<sup>19</sup> A copy of Dr. Macciocchi's Report is attached to this Appeal as Exhibit "18".





Claimants name: Darren Mickell  
 Appeal of T&P Benefit Denial

explicitly acknowledged Mr. Mickell's limitations in his response to question 9, additional remarks, to which he responded *Player may have medical impairment and psychiatric conditions which merit assessment*. Interestingly, Dr. Macciocchi seems to question Dr. Todd's findings while at the same time noting that Dr. Todd's neuropsychological examination occurred over 3 sessions. It cannot be argued that the significant amount of time Dr. Todd spent with Mr. Mickell compared to the mere hour that Dr. Macciocchi was able to see him, would provide Dr. Todd with more insight and put him in a better position to assess Mr. Mickell's cognitive limitations.

Dr. Macciocchi also incorrectly asserted that Dr. Todd did not discuss how he reached his clinical conclusion given that many test scores were average and more proficient than Mr. Mickell's general level of intellectual functioning. Dr. Todd's report is quite detailed and very clearly details the bases for his overall opinion and this is highlighted and detailed in a later section of this Appeal. Dr. Macciocchi further confirms that the test results from his own neuropsychological testing indicate that Mr. Mickell has significant cognitive limitations; however, he attributes this to Mr. Mickell's alleged lack of effort (of which there is no proof) while simultaneously stating that *Mr. Mickell did not evidence other signs of performance invalidity, such as pervasively impaired neuropsychological test performance that deviates from known patterns of brain functioning, other than in the area of memory functioning*. This strongly suggests that Dr. Macciocchi is looking for any reason to question Mr. Mickell's test results. No other physician indicated, stated, or even implied that Mr. Mickell was not credible and/or that he did not put forth effort during an examination.

Finally, Dr. Macciocchi's assessment is not conclusive and strongly suggests that Mr. Mickell does have severe limitations that may prevent full time work of any kind:

*Whether Mr. Mickell's medical problems such as chronic pain or a psychiatric disorder, most likely depression and panic disorder, would prevent him from working CANNOT BE DEFINITELY DETERMINED BY THE CURRENT EXAMINATION. There is clinically suggestive evidence he may have a major depressive disorder and a panic disorder, which COULD IMPAIR his ability to secure and maintain successful employment.*

### Medical Review

As the direct result of numerous injuries and the accelerated degeneration of his body, Mr. Mickell has debilitating symptoms, restrictions, and limitations which have prevented him from being able to substantially engage in any occupation or employment for remuneration or profit since he left the NFL due to injuries. A detailed summary of Mr. Mickell's medical history and limitations was provided with the Appeal letter dated June 30, 2014 (Exhibits "10"

RBM 05/14/2015



MICKELL-0946

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

and "11") and is incorporated herein. It should be noted that Mr. Mickell's symptoms continue to worsen and that he remains unable to work due for the following reasons:

- Memory problems
- Inability to concentrate
- Word Loss
- Problems with focus
- Problems processing information and following directions
- He tires easily – due to chronic pain, headaches, and inability to sleep due to pain and racing mind
- Chronic headaches – daily. Nothing really helps. Some days they are worse than others. He can't figure out what sets them off, they just come and go
- Neck pain down the middle of his neck – worse with activity. It's always there, but if he is active then the pain becomes debilitating.
- Bilateral shoulder pain - surgery on both shoulders from time in NFL. Reaching overhead is extremely difficult and painful. Also, lacks range of motion.
- Low Back Pain – chronic and its always achy, but the pain is unbearable at times. After being out or at work for several hours the pain became excruciating. He was sent home early a few times due to pain and his inability to perform any work activity.
- Left Hip Pain which makes walking and standing painful. Sharp pains in his hip that "buckle" him.
- Sitting for prolonged periods is very painful due to hip, low back and knee pain. Once pain hits very difficult to find relief. He needs to lie down often for several hours and take a muscle relaxant
- Bilateral knee pain. Chronic and severe all the times. Walking for a long time, going up and down steps and standing for too long results in unbearable pain and his knees will swell.
- A number of dislocated fingers make it difficult to grasp and use his right hand for anything involving fine motor skills.

#### FUNCTIONAL CAPACITY EXAMINATION

In addition to the foregoing medical documentation, the undersigned provided the NFLPA a copy of **the independent medical examination report from Craig Lichtblau, M.D.**<sup>20</sup> Mr. Mickell underwent an IME by Dr. Lichtblau on March 31, 2014. Details from this Report were provided in the June 30, 2014 correspondence (Exhibits "10 " and "11"). To summarize:

#### Diagnoses:

<sup>20</sup> A copy of the FCE from Dr. Lichtblau is attached to this Appeal as Exhibit "19".

RBM 05/14/2015



MICKELL-0947

A1063



Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

1. Cervical and lumbar myofascial pain, secondary to multiple injuries sustained while playing for the National Football League from 1992 to 2001.
2. History of chronic headaches, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
3. Probable traumatic brain injuries with subsequent chronic posttraumatic headaches and cognitive deficits, secondary to injuries sustained from playing football for the National Football League from 1992 to 2001.
4. Bilateral shoulder myofascial pain, secondary to injuries sustained from playing football for the National Football League from 1992 to 2001.
5. History of bilateral knee myofascial pain, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
6. Left hip myofascial pain, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
7. History of bilateral joint effusions and signal changes within his patella cartilage and subchondral bone, consistent with patella chondromalacia, indicated on bilateral knee MRIs obtained on 08/19/91, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
8. Status post examination of his left knee under anesthesia with diagnostic arthroscopy, chondroplasty, and patellofemoral articulation, performed on 08/22/91 by Dr. Peter Indelicato, secondary to patellofemoral pain syndrome with probable severe degenerative changes of his patellofemoral articulation with recurrent effusions, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
9. History of anterior horn medial meniscus tear, indicated on MRI of his left knee obtained on 01/23/92, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
10. Status post left knee arthroscopy with arthroscopic plica excision, performed by Dr. Peter Indelicato and Dr. Richard Viasak on 02/14/92, secondary to grade II/III chondromalacia of his patella with superomedial plica of his left knee, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
11. History of moderate thinning of his articular cartilage of the median ridge of his patella, indicated on MRI of his left knee obtained on 10/05/92, made symptomatic secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.
12. History of pectoral's major and possible latissimus dorsi strain, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

RBM 05/14/2015



MICKELL-0948

A1064

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

13. History of tubular accumulation of fluid in his subscapular fossa interposed between the posterior-superior surface of the subscapularis muscle and the scapula with multiple septations within the fluid with irregularity of his inferior glenoid labrum, indicated on MRI of his right shoulder obtained on 07/30/93, made symptomatic secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

14. History of a sprain to the anterior talofibular ligament of his left ankle, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

15. History of contusion with lumbosacral paraspinal muscle sprain of his right sacroiliac joint, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

16. History of an acute tear of his posterior joint capsule of his left shoulder joint associated with fluid extending from his joint into his adjacent soft tissue dorsal to the neck of his scapula with a tear of the posterior glenoid labrum with mild edema, posterior subluxation/dislocation of his humeral head with a large joint effusion identified within his glenohumeral joint, indicated on MRI of his left shoulder obtained on 10/11/95, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

17. History of a small effusion at his right hip joint with low grade chondromalacia affecting the posterior aspect of his joint, indicated on MRI of his right hip obtained on 09/08/00, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

18. History of changes at his acromioclavicular joint, consistent with an acromioclavicular separation, indicated on MRI of his left shoulder obtained on 10/31/00, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

19. Status post right shoulder arthroscopy, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

20. Status post left shoulder arthroscopy, arthroscopic subacromial decompression with coracoacromial ligament resection, arthroscopic distal clavicle excision through anterior portal, anterior-posterior labral debridement, and anterior-superior labral repair, performed on 02/05/01 by Dr. David Chao, Dr. Paul Murphy, and Dr. Calvin Wong, secondary to his left shoulder impingement syndrome and left shoulder acromioclavicular joint arthrosis with osteolysis, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

21. History of a central disk herniation at his C6-C7 spinal level with bulging disks at his C4-C5 and C5-C6 spinal levels and straightening of his normal cervical lordosis, indicated on MRI of his cervical spine without contrast completed on 06/07/11, made symptomatic

RBM 05/14/2015



MICKELL-0949

A1065



Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

22. History of a distal biceps femoris muscle and tendon grade II strain with mild patellofemoral compartment osteoarthritic change, early and medial lateral compartment osteoarthritic change, with medial meniscal postsurgical change without recurrent meniscal tear, and a small right knee effusion, indicated on MRI of his right knee without contrast obtained on 04/05/14, secondary to injuries sustained while playing football for, the National Football League from 1992 to 2001.

23. History of mild patellofemoral compartment osteoarthritic change, early and medial lateral compartment osteoarthritic change; small left knee effusion, 2.0 x 2.9 x 4.3 cm ganglion cyst within the posterior intercondylar region along the posterior margin of his posterior cruciate ligament; and a chronic grade II osteochondral injury in his anterior medial femoral condyle, indicated on MRI of his left knee without contrast obtained on 04/05/14, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

24. History of anterior left acetabular labral nondisplaced tear with moderate bilateral hip osteoarthritic change, greater on the left, indicated on MRI of his left hip/pelvis without contrast obtained on 04/05/14, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

25. Acute functional decline secondary to chronic pain, depression, erectile dysfunction, secondary to numbers 1 through 24, secondary to injuries sustained while playing football for the National Football League from 1992 to 2001.

#### Clinical Observations:

The patient was cooperative and followed instructions throughout the Medical Functional Capacity Assessment. He demonstrated good body mechanics and material handling ability. He paced himself properly between activities. He did not require frequent rest periods but did require some changes in position. There was a close correlation between the patient's complaints of pain, general weakness, general decreased endurance, extremity weakness, and his functional ability.

**It is my belief that this patient does not have the functional capacity to work 4 hours per day on an uninterrupted basis at this time.** He should be in a job setting which allows him to take breaks to change positions from sit-to-stand/stand-to-sit frequently at will for positional comfort. He may sit, stand, and walk as tolerated. He may perform limited bending, limited reaching overhead, limited pushing and pulling. He should avoid kneeling, squatting, climbing unprotected heights, running, and jumping. His estimated physical demand characteristics from the hips-to-overhead position should remain at the light level, which is specifically defined by the Dictionary of Occupational Titles as lifting 20 lbs. infrequently and 10 lbs. or less frequently. This patient should always observe appropriate

RBM 05/14/2015



MICKELL-0950

A1066

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

body mechanics which includes, but is not limited to, never bending at his waist while keeping his hips and knees extended.

**It should be understood this patient is going to suffer from acute, intermittent exacerbations of chronic pain and discomfort and, when he experiences these acute, intermittent exacerbations of pain and discomfort, he will have good days, bad days, and missed days of work.**

**It is my medical opinion, as a Board Certified Physiatrist, this patient will be unable to maintain gainful employment in the competitive open labor market or in a sheltered environment with a benevolent employer, secondary to acute, intermittent exacerbations of chronic pain.**

#### NEUROPSYCHOLOGICAL EVALUATION

The Committee was also provided with a Neuropsychological Evaluation administered by Mark Todd, Ph. D.<sup>21</sup> Again, the details of that Report were provided with the June 30, 2015 letter (Exhibits "10" and "11") and therefore following is only a brief summary of Dr. Todd's findings:

#### SUMMARY OF FINDINGS:

Darren Mickell' is a 43-year-old right-handed black male who is a retired NFL defensive end. He sustained multiple orthopedic injuries as a result of his play. He also believes that he may have sustained concussive type injuries. While he was never formally diagnosed with concussion, he noted that there were several times where he hit his head and missed plays because of his cognitive problems.

Within this context, he is concerned that he is exhibiting evidence of slow progressive cognitive decline. He notes memory difficulties, expressive and receptive language problems, inattentiveness and problems with concentration. It is harder for him to read. His handwriting is less neat.

Within this context, he also notes behavioral difficulties with notable depression. He can be irritable. His behavior can be quite different from the way it was before with some irritability.

He also has significant pain in multiple areas. He complains of problems with headache. His sleep is now strained.

Within this context, he has had multiple orthopedic procedures because of his injuries. He tends to minimize a significant family history.

A review of records indicate that he sustained multiple orthopedic injuries playing football. As best as can be determined, he had initial treatments in college, which continued into his pro

<sup>21</sup> A copy of the neuropsychological evaluation report from Dr. Todd is attached to this Appeal as Exhibit "20".

RBM 05/14/2015



MICKELL-0951



Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

career. He was somewhat forced to retirement in 2001 because of his physical problems. He notes that subsequent to that event he has had difficulty with work. He attempted to return to work in 2012, but eventually had to stop work because of his physical problems and cognitive difficulties.

The patient notes that he has had increasing depression over the last 3 years. He denies a family psychiatric history.

**Assessment of mood functioning with the MMPI-IRF revealed evidence of marked mood symptoms with depression, anxiety, and worry. He is also admittedly fearful about his future.**

**Neuropsychological testing together with educational, employment, and life history indicates an individual of overall premorbid mental abilities in the average to low average range.** He continues to demonstrate average to low average reading recognition, written arithmetic, verbal abstract reasoning, expressive vocabulary, fund of information, attention and concentration, visual discrimination, visual constructional ability, nonverbal reasoning, letter fluency, and categorical fluency. Naming might be slightly low.

On the other hand, tests of processing speed clearly reveal some slowing, as the scores are low average to borderline. Verbal executive functioning is average. Nonverbal executive functioning is low average. Sustained attention is average.

While visual construction ability is average, visual organizational ability is clearly less than expected. With regard to memory skills, new learning and short-term memory of semantic discourse is average; however, rote verbal learning seems less than expected. Visual learning is average. His short-term memory is low average. On another rote visual learning task, his performance is clearly above average, but short-term memory is only borderline.

**Testing indicated evidence of good motivation.**

**IMPRESSION:**

Overall, the patient's neuropsychological profile appears to provide evidence of a mild cognitive disorder. He clearly has less than expected memory for visual information as well as problems with rote verbal learning. He may have some slightly less than expected cognitive efficiency with mild slowing and perhaps some mild difficulties with visual perceptual analysis.

The etiology of his impairment is less clear. Certainly, his mood symptoms are a prominent problem that could contribute to and may even account for his difficulties. The concern would be, however, that his problems may also be more reflective of a significant cognitive disorder related to a potential history of multiple concussive injuries. Certainly, given his history of ongoing depression with some behavioral dyscontrol as well as cognitive complaints, there are concerns that his current difficulties may represent a more significant issue.

RBM 05/14/2015



MICKELL-0952

A1068

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

**His mood and behavior together with his physical problems and cognitive difficulties make competitive employment at this point quite difficult.** It is recommended that he obtain assistance in trying to reduce some of the effects of these variables, which might make him able to participate in a competitive employment on a more regular basis. **Unfortunately, these variables are likely to prohibit him from consistently attending work or completing work requirements.**

### **CONCLUSION**

Based on the foregoing, Mr. Mickell is entitled to Total and Permanent Disability Benefits under the terms of the Plan for players who sustained such injuries as the direct result of their employment with the NFL. The Committee wrongfully denied benefits to Mr. Mickell and as such he has suffered extreme financial hardship and incurred significant attorneys' fees and costs. Additionally, the NFL and the Plan stand in violation of numerous federal and state laws.

Mr. Mickell demands approval of his claim for total and permanent disability benefits, the immediate commencement of benefits according to the appropriate benefits calculation, the amount of back benefits due to him, and reimbursement of the full amount of costs and attorneys' fees incurred by Mr. Mickell solely as the result of the Committee's wrongful denial of benefits. The attorney's fees specific to Mr. Mickell's claim to date amount to over \$30,000, and the costs exceed \$10,000.00.<sup>22</sup> Thus, The Plan can resolve this matter **by immediately releasing payment to the undersigned at 4151 Hollywood Blvd., Hollywood, Florida 33021** on Mr. Mickell's behalf to satisfy the full amount owed to him as of the date of this letter in combination with the immediate commencement of disability benefits from the date of this letter forward.<sup>23</sup>

In closing, please be advised that in order for Mr. Mickell to have a full and fair review and opportunity to address any issues related to his benefits determination, **it is hereby requested that: any and all information, including medical consultation/reports, created by the Plan, the Committee, or its consultants during its appellate review of this claim that are relevant to a final benefit determination in this matter, be forwarded to the undersigned prior to any final benefit determination being made so that Mr. Mickell and/or his treating**

<sup>22</sup> See *Kamlet v. Prudential*, 2006 WL 1819406 (11th Circ. (Fla.)), in which the Court of Appeals affirmed the award of attorneys' fees and costs associated with Kamlet's LTD Claim with The Prudential, and held that pre-litigation and litigation attorneys' fees are recoverable in a disability claim subject to ERISA.

<sup>23</sup> Attached to this Appeal as Exhibit "21" is an Authorization to Forward Benefit Checks to DI Law Group signed by Mr. Mickell.

RBM 05/14/2015



MICKELL-0953

A1069



Page 21 of 21

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

**doctors may be granted the opportunity to review and respond to the new information.**  
The information being requested by the undersigned includes any and all information not previously disclosed in response to my previous requests. This information is being requested pursuant to Mr. Mickell's rights under the Plan and under ERISA.

I look forward to working with you to resolve this claim administratively so that further legal action is not required.

Very truly yours,

  
Mindy L. Chmielarz,  
For the Firm

Enclosures

cc: Alvaro Anillo via facsimile and Mail  
Darren Mickell

RBM 05/14/2015



MICKELL-0954

A1070

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "1"

RBM 05/14/2015

MICKELL-0955

A1071

**Bert Bell/Pete Rozelle NFL Player Retirement Plan**

200 Saint Paul Street • Suite 2420 • Baltimore, Maryland 21202-2008  
410-685-5089 • 800-638-3186 • Fax 410-783-0041



VIA FEDERAL EXPRESS

September 8, 2014

SEP 15 2014

Mr. Darren Mickell  
9250 Chelsea Dr  
Miramar, FL 33025

**Re: Application for Total and Permanent Disability Benefits**

On September 8, 2014, the Disability Initial Claims Committee ("Committee") of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered your application for total and permanent ("T&P") disability benefits. We regret to inform you that the Committee denied your application for T&P disability benefits. This letter describes the Committee's decision.

**Relevant Plan Provisions**

Plan section 5.1 states that "An Eligible Player whose application for total and permanent disability ("T&P") benefits is received by this Plan on or after September 1, 2011, who is determined by the Retirement Board or the Disability Initial Claims Committee to be totally and permanently disabled in accordance with Section 5.2, and who satisfies the other requirements of this Article 5, will receive a monthly T&P benefit in the amount described in Section 5.5 for the months described in Sections 5.8 and 5.9. For purposes of this Article, an Eligible Player is a Vested Inactive Player or an Active Player."

Plan section 5.2(a) states, in relevant part, that a Player "who is not receiving monthly retirement benefits under Article 4 or Article 4A will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds (1) that he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit, but expressly excluding any disability suffered while in the military service of any country, and (2) that such condition is permanent."

Plan section 5.2(b) states, in relevant part, that an "An Eligible Player who is not receiving monthly pension benefits under Article 4 or 4A, who has been determined by the Social Security Administration to be eligible for disability benefits under either the Social Security disability insurance program or Supplemental Security Income program, and who is still receiving such benefits at the time he applies, will be deemed to be totally and permanently disabled, unless four voting members of the Retirement Board determine that such Player is receiving such benefits fraudulently and is not totally and permanently disabled."

RBM 05/14/2015

MICKELL-0956

A1072



### Discussion

On September 8, 2014, the Committee denied your application for T&P benefits because it determined that you do not meet the standard set forth in Plan section 5.2(a). Specifically, the Committee noted that Plan neutral orthopedist – Chaim Arlosoroff, M.D., Plan neutral neurologist – Barry J. McCasland, M.D., and Plan neutral neuro-psychologist – Stephen N. Macciocchi, Ph.D., indicated that you are employable. The Committee also noted that you have not presented evidence that you receive Social Security disability benefits. The Committee concluded that you are not totally and permanently disabled within the meaning of the Plan, and denied your application on this basis.

### Appeal Rights

Attached to this letter is section 12.6 of the Plan, which governs your right to appeal the Committee's decision. You may appeal the Committee's decision to the Plan's Retirement Board by filing a written request for review with the Retirement Board at this office within 180 days of your receipt of this letter. You should also submit written comments, documents and any other information that you believe shows you qualify for these benefits. The Retirement Board will take into account all available information, regardless of whether that information was available or presented to the Committee. Please note that if the Retirement Board reaches an adverse decision on review, you may then bring a civil action under section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1132(a).

A copy of the Bert Bell/Pete Rozelle NFL Player Retirement Plan Summary Plan Description is enclosed. If you have any questions, please contact the Plan Office.

Very truly yours,



Megan Anderson  
Benefits Coordinator  
on behalf of the Disability Initial Claims Committee

mea

cc: Mindy Chmielarz

Enclosure

RBM 05/14/2015

MICKELL-0957

A1073



FedEx carbon-neutral  
envelope shipping

From: (800) 638-3186  
Accounting Dept  
BELL ROZELLE PLYR PLAN  
200 SAINT PAUL ST  
STE 2420  
BALTIMORE, MD 21202

Origin ID: ODMA



14271403192026

SHIP TO: (800) 638-3186

BILL SENDER

Mindy Chmierz

4151 HOLLYWOOD BLVD

HOLLYWOOD, FL 33021



Ship Date: 11SEP14  
AsMkt 10 LB  
CAD: 105852578NNET3550

Delivery Address Bar Code



Ref # RBKCD  
Invoice #  
PO #  
Dept #

TRK# 7711 2466 6079  
0201

MON - 15 SEP AA

\*\* 2DAY \*\*

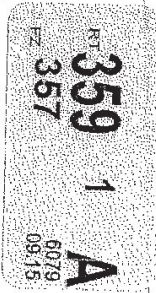
33021

FL US  
FLL

SH HWOA



8223102048AC3



velope

RBM 05/14/2015

MICKELL-0958

A1074

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "2"

RBM 05/14/2015

MICKELL-0959

A1075





COMPLETE APPLICATION RECEIVED  
 SEP 17 2013  
 Bert Bell/Pete Rozelle NFL Player Retirement Plan  
 Total and Permanent Disability Benefits Application

JUL 23 2013 JUL 09 2013 11793 M.A.  
 Signature of Player

I certify that all information and documents provided on or with this Total and Permanent Disability Benefits Application are, to the best of my knowledge, true, correct, and complete. I also authorize the Bert Bell/Pete Rozelle NFL Player Retirement Plan to use or disclose all individually identifiable health information submitted to the Plan on my behalf, or created in connection with my Application for disability benefits, to all individuals as needed for Plan purposes.

Signature of Player G. Mickell Date Completed 7/12/13

#### Player Information

Player's Name (please print) Mickell Darren  
 Date of Birth 1970 Social Security Number 1926  
 Address (number and street) 9250 Chelsea Dr  
 City Miramar FL State FL Zip Code 33025  
 Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_  
 Mobile Phone 786-277-5788 E-mail MickellLife92@yahoo.com

#### Medical, Hospital and Other Records

Have you included additional information in support of your Application for disability benefits?

☐ Yes ☒ No If yes, what is enclosed? \_\_\_\_\_

Are there other documents that you intend to include that you have not submitted with this Application?

☐ Yes ☒ No If yes, what will you be sending? \_\_\_\_\_

~~Notes: Applications cannot be processed until all information is received. Please send all supporting information to the Plan Office as soon as possible, or notify the Plan Office if you decide not to send additional information.~~

#### Disabilities and Cause

(PART 1) Describe all of the conditions that you believe make you unable to work. Please state if any of these conditions resulted from service in the military of any country. You may attach additional sheets if necessary to identify the conditions which you would like the Plan to consider.

Condition 1: No Cartilage in both knees, sore stiff and swollen  
 Condition 2: Major pain in RT Hip and numbness in RT Hip  
 Condition 3: Lower Back problems  
 Condition 4: Pain in RT & LT shoulders  
 Condition 5: \_\_\_\_\_

E-Ballot 09/23/2013

RBM 05/15/2014

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0960

A1076

**Disabilities and Cause (Continued)**

(PART 2) Higher benefits are payable if the disability(ies) that renders you totally and permanently disabled arose while you were an Active Player, and caused you to be totally and permanently disabled "shortly after" the disability(ies) first arose. In such cases the amount of your benefit will depend on whether your disability(ies) results from NFL football. If you believe you may qualify for such higher benefits, please indicate below (a) when the disability(ies) arose, (b) when they caused you to be totally and permanently disabled, and (c) whether the disability(ies) resulted from NFL football or another cause (for example, auto accident). On (d), please list all injuries, accidents or illnesses that may have caused or contributed in any way to any of the conditions listed in Section 4, Part 1. You may attach additional sheets or supporting documentation.

- (a) RT & LFT MENISCUS SHAVE OFF WHILE PLAYING FOR KC CHIEFS  
 (b) RT HIP DRAIN MULTIPLE TIMES IN SAN DIEGO  
 (c) LOWER BACK NEW ORLEANS & SAN DIEGO

(PART 3) Describe the problems you are currently experiencing. I have Problem standing for a long period of time, walking up and down stairs, bending & squatting down. I have major pain all over my body that I can't do anything physical. I have a hard time sleeping most nights because the always hurting

(PART 4) Please note that special rules apply when a condition relates to alcohol or substance abuse, or to psychiatric problems. In general, if such conditions are the cause of your inability to work, they will automatically be considered to not result from NFL football activities. Certain exceptions apply, as described in the Summary Plan Description. If you believe you qualify for one of these exceptions, please describe and enclose all supporting documentation.

**Social Security**

Are you currently receiving Social Security disability benefits? ☐ Yes ☒ No

If you checked "Yes" above, you must submit the following:

- a letter or other evidence from the Social Security Administration which states that the Social Security Administration determined you were unable to work; and
- a recent check stub or a letter from your local Social Security Administration office which states that you are still receiving Social Security benefits.

If you checked "No" above, have you applied? ☐ Yes ☐ No

If you are currently receiving Social Security disability insurance benefits, please disregard the Employment Information section.

CONTINUED ON BACK

E-Ballot 09/23/2013

RBM 05/15/2014

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0961

A1077

Player's Name Darren Mickell (AFL) LM

**Employment Information**

Are you currently employed? ☒ Yes ☐ No ☐ Never worked after playing NFL football

If you checked "Yes," please complete the following:

Employer FHI Job Title Freight Handler Start Date 4-1-12  
 Employer's Address \_\_\_\_\_  
 Supervisor's Name Charluis Atwell Supervisor's Phone 786-833-6184  
 Job Description Unload Freight with Forklift Salary (before tax) 22.00

If you checked "No," please complete the following:

Your Last Employer \_\_\_\_\_ Job Title \_\_\_\_\_ Start & End Dates \_\_\_\_\_  
 Employer's Address \_\_\_\_\_  
 Supervisor's Name \_\_\_\_\_ Supervisor's Phone \_\_\_\_\_  
 Job Description \_\_\_\_\_  
 Reason for leaving \_\_\_\_\_

E-Ballot 09/23/2013

RBM 05/15/2014

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0962

A1078



## BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT

## DISABILITY BENEFIT PLAYER CONSENT FORM

JUL 23 2013

You are applying for disability benefits under the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan"). This form contains important information. Please read the form, sign it, and return it with your application for disability benefits. This form is a required part of the application, and must be completed before your application will be processed.

I, Darren Mickell (print name), have read and understood the information in this Disability Benefit Player Consent Form.

Signature: [Signature]Date: 7/12/13

In submitting my application for disability benefits, I understand that:

1. I may be required to attend a physical examination with one or more physicians or other health professionals, and that failure to attend may cause my application to be denied.
2. There will be no doctor-patient relationship between me and the physicians or other health professionals who examine me.
3. The physicians or other health professionals who examine me will provide reports on my condition to the Plan, which I may obtain by written request to the Plan Office.
4. The physicians or other health professionals who examine me will not provide a copy of the medical reports to me directly.
5. Neither I nor my representatives (attorneys, treating physicians, etc.) are allowed to contact the physicians or other health professionals arranged by the Plan, such as to discuss their examination of me or to request copies of reports.
6. The physicians or other health professionals who examine me are required to comply with ethical or legal obligations, for example if they determine that I am a danger to myself or to others.
7. By signing this form, I consent to the above points and will comply with the Plan's procedures in connection with my claim for disability benefits.

E-Ballot 09/23/2013

RBM 05/15/2014

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0963

A1079



**Bert Bell/Pete Rozelle NFL Player Retirement Plan**

200 Saint Paul Street • Suite 2420 • Baltimore, Maryland 21202-2008  
410-685-5069 • 800-638-3188 • Fax 410-783-0041



**NFL PLAYERS  
ASSOCIATION**

**REGISTERED/RETURN RECEIPT**

August 19, 2013

Darren Mickell  
9250 Chelsea Dr  
Tallahassee, FL 32312

**Certified Article Number**  
7196 7008 9111 8865 0485  
**SENDER'S RECORD**

**Re: Total and Permanent Disability Application**

Dear Mr. Mickell:

The Disability Initial Claims Committee considered your application for Total and Permanent Disability. The Committee tabled its consideration to allow additional time for you to submit additional information about your current employment activities. This information should include a letter from your employer describing your current duties and responsibilities, recent pay stubs, and tax returns for the years 2010, 2011, and 2012.

**Please submit the requested information to the Plan Office by September 19, 2013.**

If you have any questions or concerns, please feel free to contact the Plan Office.

Very truly yours,

Sam Vincent  
Benefit Coordinator

Enclosure

RBM 05/14/2015

MICKELL-0964

A1080

PLAYER: Darren Mickell

SSN4: -1926  
DOB: [REDACTED] 1970

ISSUE: Application for **Total and Permanent** Disability Benefits

FACTS: **Eight (8)** Credited Seasons: 1992-1997, 1999-2000  
Sum of Benefit Credits: \$2,720.00

ATTACHMENTS: 1) Checklist for the Disability Initial Claims Committee  
2) Player's Completed Application received 09/17/2013  
3) Letter dated 09/04/2013 with attachments  
Lisa Howard (Human Resource Generalist at FHI, LLC)  
4) NFL Records

DECISION: Deny - employed

EFFECTIVE DATE: \_\_\_\_\_

E-Ballot 09/23/2013

DISABILITY CASE # 3

... RBM 05/14/2015

MICKELL-0965



## CHECKLIST FOR DISABILITY INITIAL CLAIMS COMMITTEE

1. Name of Player Darren Mickell 2. Date of Birth [REDACTED] 1970
3. Credited Seasons according to Plan records 8 seasons (1992-1993, 1999-2000)
4. Date Completed Disability Application received 9/17/13
5. Does Player Seek LOD Benefits? ☐ Yes ☒ No  
(If "No," skip to 6)  
A. Was application received timely after Player ceased to be an Active Player? ☐ Yes ☐ No ☐ Not clear (If "Yes," skip to 6)  
B. Does Player request exception to 48 month rule? ☐ Yes ☐ No
6. Does Player Seek T&P Benefits? ☒ Yes ☐ No  
(If "No," skip to 8)  
A. Does Player Seek Retroactive T&P Benefits? ☐ Yes ☐ No  
(If "No," skip to item 6B below)  
B. Claimed Effective Date for T&P \_\_\_\_\_  
C. Does Player claim exception to 42-month rule? ☐ Yes ☐ No  
D. Does Player claim exception to substance abuse and psychiatric rules?  
☐ Yes ☐ No ☐ N/A  
E. Does Player Claim Disability is a result of NFL Football? ☐ Yes ☐ No ☐ N/A
7. Does Application Include:  
Tax Returns? ☐ Yes ☒ No ☐ N/A  
SSA Income Statement? ☐ Yes ☒ No ☐ N/A  
Information on Prior Employers? ☐ Yes ☒ No ☐ N/A  
Medical and Hospital Records? ☐ Yes ☒ No ☐ N/A
8. Claim Processing  
A. Reviewed at DICC meeting on \_\_\_\_\_ Action Taken \_\_\_\_\_  
Reviewed at DICC meeting on \_\_\_\_\_ Action Taken \_\_\_\_\_  
Reviewed at DICC meeting on \_\_\_\_\_ Action Taken \_\_\_\_\_  
Reviewed at DICC meeting on \_\_\_\_\_ Action Taken \_\_\_\_\_  
B. Letter describing DICC Decision sent to Player on \_\_\_\_\_  
C. If claim denied, date appeal letter received \_\_\_\_\_
9. Additional Comments  
Y employed X

E-Ballot 09/23/2013

RBM 05/14/2015

MICKELL-0966

A1082

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "3"

RBM 05/14/2015

MICKELL-0967

Dec. 17, 2013 1:54PM

No. 0217 P. 2


**Bert Bell/Pete Rozelle NFL Player Retirement Plan**

 200 Saint Paul Street • Suite 2420 • Baltimore, Maryland 21202-2003  
 410-685-5065 • 800-638-3188 • Fax 410-783-0041

**REGISTERED/RETURN RECEIPT**

September 27, 2013

**Certified Article Number**

7196 4008 5111 8863 7509

**SENDER'S RECORD**

 Mr. Darren Mickell  
 9250 Chelsea Drive  
 Miramar, FL 33025

**Re: Application for Total and Permanent Disability Benefits**

Dear Mr. Mickell:

On September 27, 2013, the Disability Initial Claims Committee ("Committee") of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered your application for total and permanent ("T&P") disability benefits. We regret to inform you that the Committee denied your application for T&P disability benefits. This letter describes the Committee's decision.

**Relevant Plan Provisions**

Plan section 5.1 provides that:

"An Eligible Player whose application for total and permanent disability ("T&P") benefits is received by this Plan on or after September 1, 2011, who is determined by the Retirement Board or the Disability Initial Claims Committee to be totally and permanently disabled in accordance with Section 5.2, and who satisfies the other requirements of this Article 5, will receive a monthly T&P benefit in the amount described in Section 5.5 for the months described in Sections 5.8 and 5.9.

For purposes of this Article, an Eligible Player is a Vested Inactive Player or an Active Player."

Plan section 5.2(a) provides that:

"An Eligible Player who is not receiving monthly retirement benefits under Article 4 or Article 4A will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds (1) that he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit, but expressly excluding any disability suffered while in the military service of any country, and (2) that such condition is permanent. The

RBM 05/14/2015

MICKELL-0968

A1084



Dec. 17. 2013 1:55PM

No. 0217 P. 3

educational level and prior training of a Player will not be considered in determining whether such Player is "unable to engage in any occupation or employment for remuneration or profit." A Player will not be considered to be able to engage in any occupation or employment for remuneration or profit within the meaning of this Section 5.2 merely because such person is employed by the League or an Employer, manages personal or family investments, is employed by or associated with a charitable organization, is employed out of benevolence, or receives up to \$30,000 per year in earned income. A disability will be deemed to be "permanent" if it has persisted or is expected to persist for at least twelve months from the date of its occurrence, excluding any reasonably possible recovery period."

#### Discussion

On September 27, 2013 the Committee denied your application for T&P benefits because you are currently employed. The Committee determined that your current employment is not associated with the League or an Employer, personal or family investments, a charitable organization, or out of benevolence. Therefore, the Committee found that you are not totally and permanently disabled under Plan section 5.2(a).

#### Appeal Rights

Attached to this letter is section 12.6 of the Plan, which governs your right to appeal the Committee's decision. You may appeal the Committee's decision to the Plan's Retirement Board by filing a written request for review with the Retirement Board at this office within 180 days of your receipt of this letter. You should also submit written comments, documents and any other information that you believe shows you qualify for these benefits. The Retirement Board will take into account all available information, regardless of whether that information was available or presented to the Committee. Please note that if the Retirement Board reaches an adverse decision on review, you may then bring a civil action under section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1132(a).

A copy of the Bert Bell/Pete Rozelle NFL Player Retirement Plan Summary Plan Description is enclosed. If you have any questions, please contact the Plan Office.

Very truly yours,

  
Paul Scott  
Director of Disability Benefits  
on behalf of the Disability Initial Claims Committee

prs

Enclosure

RBM 05/14/2015

MICKELL-0969

A1085

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "4"

RBM 05/14/2015

MICKELL-0970

**Send Result Report**

MFP

**TASKalfa 300i**

Firmware Version 2K5\_2F00.009.006 2012.02.15

06/04/2014 16:21  
[2K5\_1000.008.001] [2K5\_1100.001.001] [2K5\_7000.009.004]

Job No.: 089773

Total Time: 0°01'28"

Page: 004

**Complete**

Document: doc089773



www.dilawgroup.com

Nationwide  
7808.644.2644Broward (Correspondences)  
4151 Hollywood Boulevard  
Hollywood, Florida 33021  
ofc 954.989.9000  
fax 954.989.9999Palm Beach  
14255 U.S. Highway One, Suite 235  
Juno Beach, Florida 33408  
ofc 561.202.9170  
fax 561.202.9194**FAX**

To

Megan Anderson,  
Benefits Coordinator

From

Mindy Chmielarz, Esquire

Fax

(410) 783-0041

Pages

4(with cover page)

Phone

Date

June 4, 2014

Re

DARREN MICKELL  
Application for T&P

CC

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
001	06/04/14 16:20	14107830041	0°01'28"	FAX	OK	200x100 Normal/On

**SCANNED**

RBM 05/14/2015

1

[ QZJ1206661 ]

MICKELL-0971

A1087





Paulino-Grisham, Smith, &amp; Chmielarz, P.A.

June 4, 2014

**Sent Via U.S. Mail & Facsimile: (410) 783-0041**

Retirement Board for the  
 Bert Bell/Pete Rozelle NFL Player Retirement Plan  
**Attn.: Megan Anderson, Benefits Coordinator**  
 200 St. Paul Street, Suite 2420  
 Baltimore, MD 21208-2008

**RE: Name: Darren Mickell**  
**Incident #: Application for Total and Permanent Disability Benefits**

Dear Ms. Anderson:

Today I received the Notice of Neutral Physician's Evaluation scheduled with Dr. Chaim Arlosoroff in North Palm Beach for Monday June 9, 2014. **Please be advised that with less than 4 days' notice, Mr. Mickell is unable to attend the IME on that date.** Additionally, you indicated that written notice must be received by June 2, 2014 if there are body parts, other than those listed, which he would like the neutral physician to examine. As this Notice was not received until today, June 4, 2014, (I have enclosed the Fed Ex envelope showing that your Notice dated May 30, 2014 was sent on June 2, 2014 via 2 Day mail and received in our office on Wednesday, June 4<sup>th</sup>) we are unable to comply with that request. Accordingly, please reschedule the IME providing my client at least 2 weeks' notice.

Dr. Arlosoroff's medical office is located more than 70 miles from my client's home; thereby requiring my client to travel over 140 miles to attend this IME. Thus, if Mr. Mickell agrees to attend the IME with your chosen physician he needs sufficient time to make travel arrangements, as he may need someone to drive him.

Finally, please note that that **in accordance with his legal rights under Florida law, Mr. Mickell intends to have the IME videotaped by a 3<sup>rd</sup>, independent party.** I will arrange for the videographer and pay the expense. Accordingly, please advise the physician performing the IME that the exam will be videotaped. I can assure you as well as the examining physician that the videographer will not be intrusive. As you know, a videographer being present at Mr. Mickell's IME would not only help ensure that Mr. Mickell's rights are protected, but also that the NFL Retirement Plan's rights are protected. In the event that the written report resulting from said IME is ever called into question or challenged, all parties involved can simply refer to the videotape of the IME to resolve any dispute.



www.dilawgroup.com

## Nationwide

t: 888.644.2644

## Broward (Correspondences)

4151 Hollywood Boulevard  
 Hollywood, Florida 33021  
 o/c 954.989.9000  
 fax 954.989.9999

## West Palm Beach

224 Datura Street, Suite 402  
 West Palm Beach, Florida 33401  
 o/c 561.202.9170  
 fax 561.202.9194

RBM 05/14/2015

MICKELL-0972

A1088

Page 2 of 2

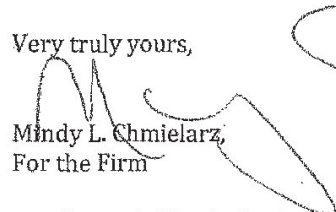
Claimant: Darren Mickell  
Re: Appeal of 9/27/13 Denial of Disability Benefits

Please further note that Florida courts have upheld the right of an individual to have a videographer or other recording third party present at an IME, which he or she must undergo at the risk of her benefits being terminated. The Florida Supreme Court has explained, "[w]e are persuaded by the fact that the doctor conducting the examination will provide a report to the insurance company . . . [and] the report, including statements made by the insured to the doctor during the examination, and potentially the doctor's own live testimony about the examination, may be used against the insured. Therefore, it is unfair to place insureds in a position where anything they say may be used to terminate their benefits, but they are not allowed an opportunity to protect themselves."<sup>1</sup> The courts reason that **"by allowing the examination to be observed by a third party or videotaped, the potential harm to either party is reduced, not increased . . ."**<sup>2</sup> The reason for this is that **"if there is no court reporter or other third party present at the examination . . . a disagreement can arise between the plaintiff and the doctor concerning the events of the IME . . ."**<sup>3</sup> Additionally, it was specifically addressed by these courts that **"the concerns of physicians for conducting examinations without the distraction of third persons cannot outweigh the insured's rights."**<sup>4</sup> We trust that you will make every effort to accommodate Mr. Mickell's request and will allow for a videographer to be present at his IME without issue.

Finally, as I advised attorney Alvaro Anillo, we plan to submit all documents and information necessary to supplement Mr. Mickell's appeal by the end of this month. However, due to problems obtaining all of Mr. Mickell's past medical records and updated MRI reports it is possible that these documents will not be submitted to Mr. Anillo and the Board for the NFL Player Retirement Plan until July. It has already been confirmed that because Mr. Mickell's appeal was timely filed, further delays will not waive his right to an appeal or to have his claim reevaluated.

Should you have any questions or wish to further discuss this matter, please do not hesitate to contact me at (954) 989-9000.

Very truly yours,

  
Mindy L. Chmielarz,  
For the Firm

cc: Alvaro Anillo via facsimile and Mail

<sup>1</sup> See *U.S. Sec. Ins. Co. v. Cimino*, 754 So.2d 697 (Fla. 2000).

<sup>2</sup> *Cimino*, 754 So.2d 697, See also, *Byrd v. Southern Prestressed Concrete, Inc.*, 928 So.2d 455 (Fla. 1<sup>st</sup> DCA 2006)

<sup>3</sup> *Id.* See also *Wilkins v. Palumbo*, 617 So.2d 850, 852 (Fla. 2d DCA 1993).

<sup>4</sup> *Cimino*, 754 So.2d 697.



RBM 05/14/2015

MICKELL-0973

A1089

RBM 05/14/2015

MICKELL-0974

A1090



RBM 05/14/2015

MICKELL-0975

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "5"

RBM 05/14/2015

MICKELL-0976

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "6"

RBM 05/14/2015

MICKELL-0977





Paulino-Grisham, Smith, & Chmielarz, P.A.

June 17, 2014

**Sent Via Federal Express**

Retirement Board for the  
Bert Bell/Pete Rozelle NFL Player Retirement Plan  
**Attn.: Megan Anderson, Benefits Coordinator**  
200 St. Paul Street, Suite 2420  
Baltimore, MD 21208-2008

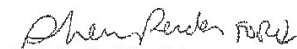
**RE: Name: Darren Mickell**  
**Incident #: Application for Total and Permanent Disability Benefits**

Dear Ms. Anderson:

As you may know, this office has been retained to represent Darren Mickell in his claim for disability benefits pursuant to his rights under the Bert Bell/Pete Rozelle NFL Player Retirement Plan. Enclosed please find a CD with copies of medical documentation. We will be supplementing with additional information shortly.

Thank you for your attention to this matter.

Very truly yours,

  
Mindy L. Chmielarz,  
For the Firm

Enclosure: As set forth herein.

cc: Paul Scott, Director of Disability Benefits



[www.dilggroup.com](http://www.dilggroup.com)

Nationwide  
t 888.644.2644

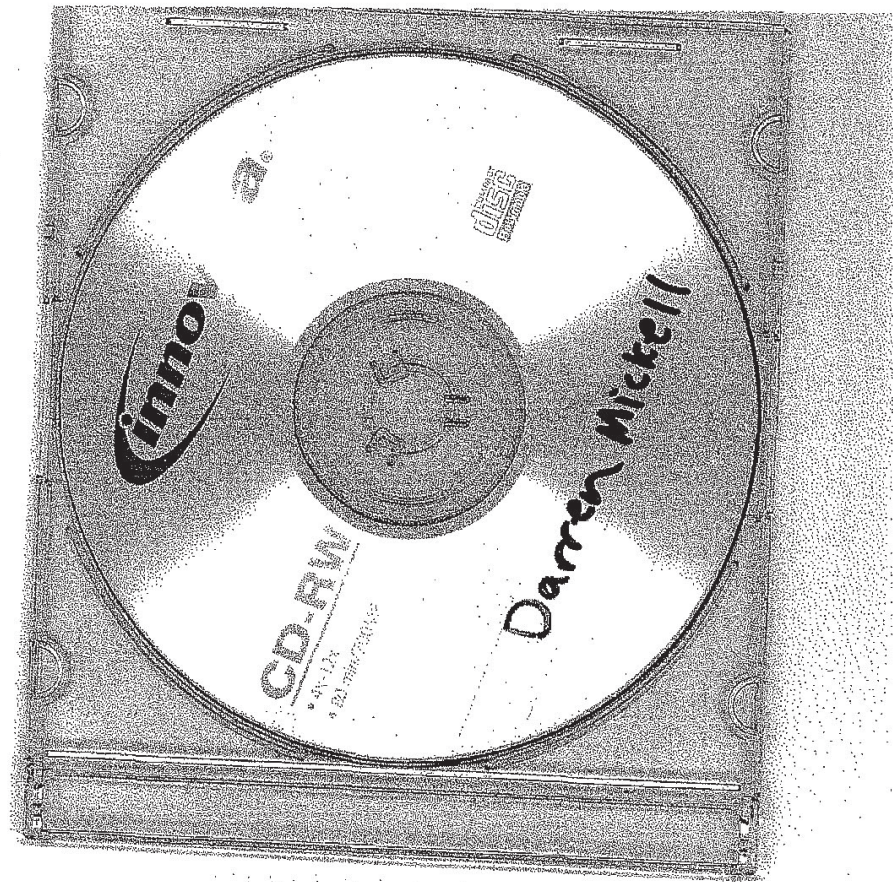
Broward (Correspondences)  
4151 Hollywood Boulevard  
Hollywood, Florida 33021  
o/c 954.989.9000  
fax 954.989.9999

West Palm Beach  
224 Datura Street, Suite 402  
West Palm Beach, Florida 33401  
o/c 561.202.9170  
fax 561.202.9194

RBM 05/14/2015

MICKELL-0978

A1094



RBM 05/14/2015

MICKELL-0979

6/17/2014

FedEx Ship Manager - Print Your Label(s)

From: (954) 989-9000  
Mindy L. Chmielarz  
DL Law Group  
4151 Hollywood Blvd.

Origin ID: HWOA

FedEx  
Express

HOLLYWOOD, FL 33021

Ship Date: 17JUN14  
ActWgt: 1.0 LB  
CAD: 102858556/INET3490

Delivery Address Bar Code



SHIP TO: (800) 638-3186

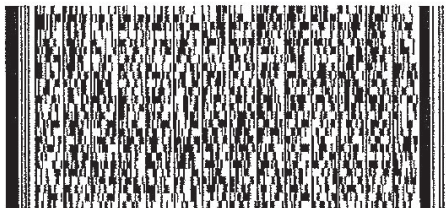
BILL SENDER

Paul Scott, Director of Dis. Bene  
Bert BellPete Rozelle NFL Player  
200 Saint Paul Street  
Suite 2420  
BALTIMORE, MD 21202

Ref # Mickell  
Invoice #  
PO #  
Dept #

WED - 18 JUN AA  
STANDARD OVERNIGHT

TRK# 7703 3293 9081  
0201



XE ODMA

21202  
MD-US  
BWI



S2ZG5B8C4FZ20

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

RBM 05/14/2015

MICKELL-0980

A1096



6/17/2014

FedEx Ship Manager - Print Your Label(s)

From: (954) 989-9000  
Mindy L. Chmielez  
DI Law Group  
4151 Hollywood Blvd.

Origin ID: HWOA



J14101402070328

Ship Date: 17JUN14  
ActWgt: 1.0 LB  
CAD: 102858556/NET3490

Delivery Address Bar Code



Ref # Mickell  
Invoice #  
PO #  
Dept #

SHIP TO: (800) 638-3186

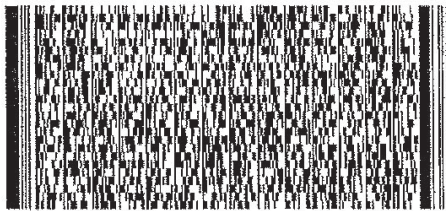
BILL SENDER

Megan Anderson, Benefits Coordinato  
Bert Bell/Pete Rozelle NFL Player  
200 Saint Paul Street  
Suite 2420  
BALTIMORE, MD 21202

WED - 18 JUN AA  
STANDARD OVERNIGHT

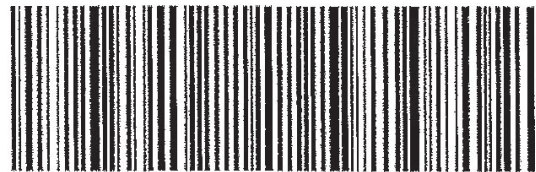
TRK# 7703 3287 1059

0201



XE ODMA

21202  
MD-US  
BWI



522G5B9CA#F220

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "7"

RBM 05/14/2015

MICKELL-0982

06/16/2014 16:41 DI LAW GROUP

(FAX) 561 223 3535

P.002/005

## DI LAW GROUP

Paulino-Graham, Smith &amp; Chmielez, P.A.

June 16, 2014

Sent Via U.S. Mail & Facsimile: (410) 783-0041

Retirement Board for the  
 Bert Bell/Pete Rozelle NFL Player Retirement Plan  
 Attn.: Megan Anderson, Benefits Coordinator  
 200 St. Paul Street, Suite 2420  
 Baltimore, MD 21208-2008

RE: Name: Darren Mickell  
 Incident #: Application for Total and Permanent Disability Benefits

Dear Ms. Anderson:

On June 5, 2014, this Firm was informed that the Plan refuses to allow Mr. Mickell to enforce his right to have the Plan's scheduled medical evaluation videotaped by a neutral third party. Upon receipt of the correspondence, the undersigned had a telephone conference with Alvaro I. Anillo to discuss this matter. Mr. Anillo asserted that the Plan refuses to allow videotaping and would not provide an explanation as to the Plan's decision, other than to assert that he did not believe the Plan was required to abide by the case law outlined previously. When asked why the Plan requires a secrete evaluation and had an issue with having unedited proof of what occurred at the evaluation, Mr. Anillo offered no explanation and stated that he did not have to provide an answer to the questions posed by the undersigned. When the undersigned reminded him of the Plan's fiduciary duties to its beneficiary and its obligation to have an open dialogue with Mr. Mickell and his representative, Mr. Anillo he said that the Plan's duty was to make accurate claim decisions and not to Mr. Mickell. When the undersigned asked how the videotaping of the evaluation was in conflict with his version of the Plan's duties under ERISA, he refused to answer and stated simply, the Plan is not required and will not allow videotaping.

The undersigned also asserted that the Plan does not preclude the videotaping of evaluations. Mr. Anillo asserted that the Plan states that the Board can make policies and procedures for the administration of the Plan and the Board has a policy that it does not allow videotaping. The undersigned requested a copy of the policy. Mr. Anillo first asserted that he did not have to provide the undersigned with the policy. After further pressing, Mr. Anillo asserted that he would provide the policy. When asked when the undersigned could expect a copy, Mr. Anillo placed the undersigned on hold and then asserted that the policy was on an authorization signed by Mr. Mickell in which Paragraph 1 asserts that Mr. Mickell must attend an evaluation and Paragraph 5 states that neither Mr. Mickell nor his representatives could contact the medical examiner. Mr.



www.dilawgroup.com

Nationwide  
 410.644.2644

Broward (Correspondence)  
 4151 Hollywood Boulevard  
 Hollywood, Florida 33021  
 o/c 954.389.5000  
 fax 954.389.3599

West Palm Beach  
 224 Datura Street, Suite 402  
 West Palm Beach, Florida 33401  
 o/c 561.202.9170  
 fax 561.202.9194

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0983

A1099

06/16/2014 16:41 D/LAW GROUP

(FAX) 561 223 3535

P.003/005

Page 2 of 4

Claimant: Darren Mickell  
 Re: 6-17-14 Evaluation

Anillo asserted that a videographer's attendance at the evaluation would be considered a "contact" by Mr. Mickell's representative. The undersigned asserted that (1) the authorization was not part of the Plan and (2) if attendance at the evaluation was a contact, Mr. Mickell would be violating Paragraph 5 of the authorization by attending the evaluation or Paragraph 1 if he failed to attend the evaluation and thus, attendance at the evaluation cannot reasonably read to be a "contact" under Paragraph 5. Mr. Anillo simply asserted that Mr. Mickell's attendance was not a "contact," but a videographer's attendance would be and refused to explain his assertion.

The undersigned requested a copy of the "policy." Mr. Anillo asserted that he already sent all documentation. The undersigned asserted that this is the first time that the Plan is asserting that a Plan provision prevented the videotaping of an evaluation and thus, Mr. Mickell was requesting documentation of that policy. Mr. Anillo refused. When pressed further, Mr. Anillo said he would send a copy. To date, no such copy was sent. Accordingly, Mr. Mickell again formally requests a copy of the policy that the Plan asserts precludes the videotaping of evaluations.

Further, Mr. Anillo then asserted that he would have to call the undersigned back to discuss this matter further. When asked when he would be calling, Mr. Anillo asserted that he "had no idea" and was "noting going to commit to a specific time and date." The undersigned asked why a return call was needed if the Plan has made a decision. Mr. Anillo asserted "its not, you're the one who called me." The Undersigned reminded Mr. Anillo that she did not request a return call. No such return call was made.

Please be advised that the Plan's refusal to allow Mr. Mickell to videotape the evaluation directly infringes on his rights under Florida law. As the Eleventh Circuit Court explained in *Horton v. Reliance Standard Life Ins. Co.*, 141 F.3d 1038, 1041 (11th Cir. 1998) that "[a]lthough it is a comprehensive and reticulated statute," where ERISA's text is silent on [a matter], "[c]ourts have the authority to develop a body of federal common law to govern issues in ERISA actions not covered by the act itself." (citations omitted). The Eleventh Circuit further explained:

When crafting a body of common law, federal courts may look to state law as a model because of the states' greater experience in interpreting insurance contracts and resolving coverage disputes." To decide whether a particular rule should become part of ERISA's common law, courts must examine whether the rule, if adopted, would further ERISA's scheme and goals. *Nachwalter v. Christie*, 805 F.2d 956, 960 (11th Cir.1986). ERISA has two central goals: (1) protection of the interests of employees and their beneficiaries in employee benefit plans, *id.*; and (2) uniformity in the administration of employee benefit plans, *Smith v. Jefferson Pilot Life Ins. Co.*, 14 F.3d 562, 570-71 (11th Cir.1994).

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0984

A1100



06/16/2014 16:42 DI LAW GROUP

(FAX) 561 223 3535

P.004/005

Page 3 of 4

Claimant: Darren Mickell  
 Re: 6-17-14 Evaluation

As was explained to Mr. Anillo, ERISA is silent on the issue of whether a beneficiary has a right to have Plan required evaluations videotaped and this particular Plan simply does not have a provision precluding videotaping. Accordingly, we must look to Florida law for guidance on the matter. The Florida courts have upheld the right of an individual to have a videographer or other recording third party present at an IME, which he or she must undergo at the risk of her benefits being terminated. The Florida Supreme Court has explained, "[w]e are persuaded by the fact that the doctor conducting the examination will provide a report to the insurance company . . . [and] the report, including statements made by the insured to the doctor during the examination, and potentially the doctor's own live testimony about the examination, may be used against the insured. Therefore, it is unfair to place insureds in a position where anything they say may be used to terminate their benefits, but they are not allowed an opportunity to protect themselves."<sup>1</sup> The courts reason that "by allowing the examination to be observed by a third party or videotaped, the potential harm to either party is reduced, not increased . . ."<sup>2</sup> The reason for this is that "if there is no court reporter or other third party present at the examination . . . a disagreement can arise between the plaintiff and the doctor concerning the events of the IME . . ."<sup>3</sup> Additionally, it was specifically addressed by these courts that "the concerns of physicians for conducting examinations without the distraction of third persons cannot outweigh the insured's rights."<sup>4</sup> We trust that you will make every effort to accommodate Mr. Mickell's request and will allow for a videographer to be present at his IME without issue.

The Plan's refusal to allow videotaping of the evaluation is in direct disregard of Mr. Mickell's rights under Florida law. Moreover, it calls into question the independence of the evaluation and the Plan's motives in setting the evaluation under these restrictions. Mr. Mickell will attend the evaluation, as Mr. Anillo asserted that if Mr. Mickell does not attend, his claim will be denied. However, he does so only under objection and without waiving his right to challenge the independence of the evaluation or the Plan's reasonableness in investigating his claim.

Finally, previously Mr. Anillo was advised that this Firm plans to submit all documents and information necessary to supplement Mr. Mickell's appeal by the end of this month. However, due to problems obtaining all of Mr. Mickell's past medical records and updated MRI reports it is possible that these documents will not be submitted to Mr. Anillo and the Board for the NFL Player Retirement Plan until July. It has already been confirmed that because Mr. Mickell's appeal was timely filed, further delays will not waive his right to an appeal or to have his claim reevaluated.

<sup>1</sup> See *U.S. Sec. Ins. Co. v. Cimino*, 754 So.2d 697 (Fla. 2000).

<sup>2</sup> *Cimino*, 754 So.2d 697, See also, *Byrd v. Southern Prestressed Concrete, Inc.*, 928 So.2d 455 (Fla. 1<sup>st</sup> DCA 2006)

<sup>3</sup> *Id.* See also *Wilkins v. Palumbo*, 617 So.2d 850, 852 (Fla. 2d DCA 1993).

<sup>4</sup> *Cimino*, 754 So.2d 697.

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0985

A1101



06/16/2014 16:42 DI LAH GROUP

(FAX) 561 223 3535

P.005/005

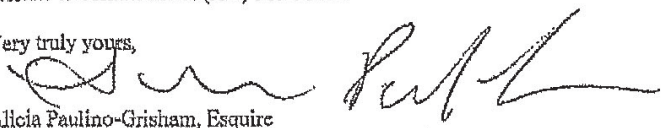
Page 4 of 4

Claimant: Darren Mickell  
Re: 6-17-14 Evaluation

In addition to the conditions listed for evaluation on the June 5, 2014 evaluation correspondence, Mr. Mickell suffers from neck, hands, fingers, and ankle pain, as well as cognitive impairments.

Should you have any questions or wish to further discuss this matter, please do not hesitate to contact me at (954) 989-9000.

Very truly yours,

  
Alicia Paulino-Grisham, Esquire  
For the Firm

cc: Alvaro Anillo via facsimile and Mail

DC

E-Ballot 09/04/2014

RBM 05/14/2015

MICKELL-0986

A1102

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "8"

RBM 05/14/2015

MICKELL-0987

## GROOM LAW GROUP

JUN 20 2014

Alvaro I. Anillo  
(202) 861-6621  
aanillo@groom.com

June 19, 2014

**By Federal Express**

DI Law Group  
Attn: Alicia Paulino-Grisham  
4151 Hollywood Boulevard  
Hollywood, FL 33021

**Re: Darren Mickell**

Dear Ms. Paulino-Grisham:

Thank you for the copy of your June 16 letter to Ms. Anderson at the Plan Office. While I believe that you mischaracterize much of what we discussed on June 5, and I disagree wholeheartedly with your assessment that the Plan's policy against videotaping violates Mr. Mickell's rights under ERISA or implies anything about the Plan's "motives," you are absolutely correct that Mr. Mickell's application could be denied if he fails to attend the examination.

To clarify another point: On page 3 of your letter you state that you "trust [the Plan] will make every effort to accommodate Mr. Mickell's request and will allow for a videographer to be present at his IME without issue." I assume you simply failed to delete that sentence when you cut-and-pasted the text from your previous letter into this one, but in any event I will remind you that the neutral examination will not take place if Mr. Mickell makes any last-minute attempt to record it on his own or through a third party.

Thank you for allowing your client to attend the neutral examination consistent with the Plan's policies and procedures. I am glad to put this distraction behind us, and encouraged that Mr. Mickell's claim will now proceed through the review process and be decided on its merits.

Sincerely,



Alvaro I. Anillo

cc: Plan Office  
Mindy Chmielarz

GROOM LAW GROUP, CHARTERED  
1701 Pennsylvania Ave., N.W. • Washington, D.C. 20006-5811  
202-857-0620 • Fax: 202-659-4503 • www.groom.com

RBM 05/14/2015

MICKELL-0988

A1104

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "9"

RBM 05/14/2015

MICKELL-0989

A1105





Paulino-Grisham, Smith, &amp; Chmielarz, P.A.

June 20, 2014

**Sent Via U.S. Mail & Facsimile: (202) 659-4503**

Alvaro I. Anillo  
 1701 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20006-5811

**RE: Darren Mickell**

Mr. Anillo:

The undersigned is in receipt of your June 19, 2014 correspondence. In your letter, you indicated that you believe the undersigned "mischaracterized much of what we discussed on June 5." However, tellingly, you failed to set forth even one alleged misrepresentation of our conversation.

You next assert that you "disagree wholeheartedly with [the undersigned's] assessment that the Plan's policy against videotaping violates Mr. Mickell's rights under ERISA or implies anything about the Plan's 'motives.'" Please re-read the undersigned's correspondence. First and foremost, the Plan's refusal to allow videotaping violates Mr. Mickell's right under Florida law, which has not been preempted by ERISA. This was thoroughly explained in the undersigned's correspondence. Your allegations establish a fundamental misapprehension of the law and ERISA preemption. Moreover, as also addressed in the undersigned's correspondence, the Plan does not prohibit videotaping of evaluations and you have not provided any documentation of an established policy enacted by the Plan or Board prohibiting such videotaping. The Plan's insistence on a clandestine evaluation certainly calls into question the Plan's motives, the reasonableness of its investigation, and the independence of the evaluation. As indicated, Mr. Mickell reserves his right to challenge the thoroughness of the evaluation and the Plan's reasonableness based on its actions.

You also contend that the undersigned's statement that she "trust[s] [the Plan] will make every effort to accommodate Mr. Mickell's request and will allow for videotaping" was inadvertently left in after she "cut and pasted" from a previous correspondence. Your claim is void of merit. During our June 5, 2014 telephone conference, your supervisor actually requested that the undersigned provide a breakdown of the case law that supports Mr. Mickell's position that he has a right under the law to have his evaluation videotaped. The undersigned was assured that the Plan would consider the information provided. The undersigned complied with



www.dilawgroup.com

**Nationwide**

tf 888.644.2644

**Broward (Correspondences)**

4151 Hollywood Boulevard  
 Hollywood, Florida 33021  
 ofc 954.989.9000  
 fax 954.989.9999

**West Palm Beach**

224 Datura Street, Suite 402  
 West Palm Beach, Florida 33401  
 ofc 561.202.9170  
 fax 561.202.9194

RBM 05/14/2015

MICKELL-0990

A1106

Page 2 of 2

Claimant: Darren Mickell

the request and provided the information. Thus, as the case law is clear, the undersigned again requested that the Plan reconsider its unreasonable position. Unfortunately, given your statement, it is clear that the Plan never had any intention of actually considering the information provided or engaging in an open dialogue with its beneficiary, despite its obligations under the law and fiduciary duty to Mr. Mickell.

You then threaten that "if Mr. Mickell makes any last minute attempt to record [the evaluation] on his own or through a third party," the evaluation "will not take place" and "Mr. Mickell's application could be denied if he fails to attend the examination." Your threats are unreasonable, unacceptable, and frankly, nonsensical. Again, a reasonable administrator, who is acting in the best interest of its beneficiaries, would have no issue allowing its beneficiary to assert his right to videotape the evaluation. Moreover, a reasonable administrator, whose sole focus is to render an accurate claim decision would have no issue allowing unedited evidence of what occurred during the evaluation. Finally, your letter was dated June 19, 2014, two days after the evaluation took place. Accordingly, the undersigned is baffled as to why you would threaten to cancel an evaluation that has already occurred, and deny Mr. Mickell's claim, if he asserted his right under the law and attempted to videotape the evaluation (again, which has already occurred). To further confound the matter, in the very next paragraph, you thank the undersigned for allowing Mr. Mickell to attend the evaluation, indicating that you were aware that Mr. Mickell attended the evaluation.

Should you have any questions or wish to further discuss this matter, please do not hesitate to contact me at (954) 989-9000.

Very truly yours,

Alicia Paulino-Grisham, Esquire  
For the Firm

cc: Paul Scott



RBM 05/14/2015

MICKELL-0991

A1107

**Darren Mickell**

Appeal of Denied Application for  
Total and Permanent Disability Benefits

Exhibit "10"

RBM 05/14/2015

MICKELL-0992

# Send Result Report



MFP

TASKalfa 3501i

Firmware Version 2N9\_2000.003.033 2014.05.07

06/30/2014 15:01  
[2N7\_1000.002.002] [2N4\_1100.001.002] [2N4\_2000.003.032]


Job No.: 001228

Total Time: 0°45'50"

Page: 077

## Complete

Document: doc00122820140630131556

	www.dclap.com	Nickmide 833-644-2644	Steward (Conceptualism) 410 Hollywood Boulevard Hollywood, Florida 33022 o/c 314.585.9000 t/c 314.585.9999	Tom Beach 14335 U.S. Highway One, Suite 225 Boca Raton, Florida 33433 o/c 561.201.9110 t/c 561.201.9194
---	---------------	--------------------------	--	---

**FAX**

To Paul Scott, Director of Disability Benefits From Mindy Chmielewicz, Esquire

Fax (410) 783-8041 Pages 77 (with cover page)


Phone \_\_\_\_\_ Date June 30, 2014

Re DARREN MICKELL Appeal Documents CC \_\_\_\_\_

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments: Please review and keep for your records a copy of the fax sent to Mr. Anillo.

Confidentiality Note • The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to (888) 644-2644 and promptly destroy these documents. Thank you.

www.dclap.com 

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECH
001	06/30/14 14:12	14107830041	0°45'50"	FAX	OK	200x200 Fine/On

RBM-05/14/2015

17S1Y04174 1

MICKELL-0993

A1109



# Send Result Report



MFP

TASKalfa 3501i

Firmware Version 2N9\_2000.003.033 2014.05.07

06/30/2014 14:11  
[2N7\_1000.002.002] [2N4\_1100.001.002] [2N4\_7000.003.032]


Job No.: 001225

Total Time: 0°57'09"

Page: 077

## Complete

Document: doc00122520140630131322

	www.dclonggroup.com	Natlenside 5 888 644 2644	Monaco II (Longwood) 4031 Hollywood Boulevard Hollywood, Florida 33021 Tel: 854 989 5500 Fax: 854 989 5159	Julie Beach 14255 U.S. Highway One, Suite 215 Juno Beach, Florida 33408 Tel: 361 202 0100 Fax: 361 202 0154
---	---------------------	------------------------------	--	---

**FAX**

To: Alvaro L. Anillo, Esq. From: Mindy Chmielewicz, Esq.


Fax: (202) 659-4503 Pages: 77 (with cover page)

Phone: \_\_\_\_\_ Date: June 30, 2014

Re: DARREN MICKELL CC: \_\_\_\_\_  
Appeal Documents

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Confidentiality Note • The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to (888) 644-2644 and promptly destroy these documents. Thank you.

www.dclonggroup.com 

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
001	06/30/14 13:14	12026594503	0°57'09"	FAX	OK	200x200 Fine/Off

RBM 05/14/2015

1

[ L7S3Y04174 ]

MICKELL-0994

A1110



www.dlilawgroup.com

**Nationwide**

toll 888.644.2644

**Broward (Correspondences)**

4151 Hollywood Boulevard  
Hollywood, Florida 33021  
ofc 954.989.9000  
fax 954.989.9999

**Palm Beach**

14255 U.S. Highway One, Suite 235  
Juno Beach, Florida 33408  
ofc 561.202.9170  
fax 561.202.9194

**FAX**

**To** Paul Scott, Director of Disability Benefits **From** Mindy Chmielarz, Esquire

**Fax** (410) 783-0041 **Pages** 77 (with cover page)

**Phone** \_\_\_\_\_ **Date** June 30, 2014

**Re** DARREN MICKELL Appeal Documents **CC** \_\_\_\_\_

☐ Urgent      ☐ For Review      ☐ Please Comment      ☐ Please Reply      ☐ Please Recycle

**Comments:** Please review and keep for your records a copy of the fax sent to Mr. Anillo.

**Confidentiality Note** • The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to (888) 644.2644 and promptly destroy these documents. Thank you.

www.dlilawgroup.com



RBM 05/14/2015

MICKELL-0995

A1111



www.dilawgroup.com

**Nationwide**

toll 888.644.2644

**Broward (Correspondences)**4151 Hollywood Boulevard  
Hollywood, Florida 33021  
ofc 954.989.9000  
fax 954.989.9999**Palm Beach**14255 U.S. Highway One, Suite 215  
Juno Beach, Florida 33408  
ofc 561.202.9170  
fax 561.202.9194**FAX**

**To** Alvaro I. Anillo, Esq. **From** Mindy Chmielarz, Esq.

**Fax** (202) 659-4503 **Pages** 77 (with cover page)

**Phone** \_\_\_\_\_ **Date** June 30, 2014

**Re** DARREN MICKELL **CC** \_\_\_\_\_  
Appeal Documents

☐ **Urgent**      ☐ **For Review**      ☐ **Please Comment**      ☐ **Please Reply**      ☐ **Please Recycle**

**Confidentiality Note** • The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to (888) 644.2644 and promptly destroy these documents. Thank you.

www.dilawgroup.com



RBM 05/14/2015

MICKELL-0996

A1112



Paulino-Grisham, Smith, &amp; Chmielarz, P.A.

June 30, 2014

**Sent Via U.S. Mail & Facsimile: (410) 783-0041**

Retirement Board for the  
 Bert Bell/Pete Rozelle NFL Player Retirement Plan  
 Attn.: Paul Scott, Director of Disability Benefits  
 on behalf of the Disability Initial Claims Committee  
 200 St. Paul Street, Suite 2420  
 Baltimore, MD 21208-2008

**RE: Darren Mickell- Supplemental Information for Total and Permanent  
 Disability Benefits Claim**

Dear Mr. Scott:

As you are aware, this Firm represents Darren Mickell in his claim for Total and Permanent ("T&P") Disability Benefits under the terms of the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Plan"). This correspondence and the information annexed hereto, as well as all information previously provided, serve as supplemental information to Mr. Mickell's formal appeal and response to the September 27, 2013 denial letter (the "Denial Letter"), which denied Mr. Mickell his right to total and permanent disability benefits in the above-referenced matter.<sup>1</sup> Mr. Mickell's Appeal was timely filed as of March 11, 2014. However, due to delays in providing the undersigned with a copy of the Claim File and Plan documents and problems obtaining Mr. Mickell's medical records from the football teams for which he played as well as from the physicians with whom he most recently treated, Alvaro Anillo, Esquire, in his capacity as the Plan's legal representative, advised Mr. Mickell that his claim will remain open until all documents to be reviewed as part of the appeal have been submitted.<sup>2</sup> The undersigned continuously advised Mr. Anillo of the ongoing delays in obtaining medical records. In response, Mr. Anillo continued to reassure the undersigned that the appeal review will not commence or be completed until all information has been provided.<sup>3</sup>

**Brief History of Claim:**

Mr. Mickell played professional football for the National Football League ("NFL") from 1992 to 2001 for several teams including Kansas City, New Orleans, San Diego, and Oakland. During Mr. Mickell's tenure with the NFL, Mr. Mickell sustained serious injuries, but continued to play football for as long as possible. Mr. Mickell's first

<sup>1</sup> A copy of the Denial Letter is attached to this Appeal as Exhibit "1".

<sup>2</sup> A copy of the March 11, 2014 letter confirming the ongoing extension to provide supplemental information is attached to this Appeal Letter as Exhibit "2".

<sup>3</sup> A copy of correspondence regarding the delays and ongoing extension is attached to this Appeal Letter as Exhibit "3".



www.dilawgroup.com

RBM 05/14/2015

**West Palm Beach**

224 Datura Street, Suite 402  
 West Palm Beach, Florida 33401  
 o/c 561.202.9170  
 fax 561.202.9194

**Miami (Correspondences)**

5907 NW 151st Street, Suite 200A  
 Miami Lakes, Florida 33014  
 o/c 305.820.0800  
 fax 305.820.0808

**Broward**

4131 Hollywood Boulevard  
 Hollywood, Florida 33021  
 o/c 954.351.7688

MICKELL-0997

A1113



Page 2 of 44

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

significant injury occurred in 1994 to both knees while playing for Kansas City. During the 1994 season, the team physicians did what they could to alleviate the pain and keep Mr. Mickell in the game; however at the end of the season he had surgery on both knees. Just prior to the surgery, Mr. Mickell was given an injection in his back, which he understood would allow him to remain awake throughout the entire procedure. Apparently, something went wrong and he was put to sleep for the surgery. When he woke-up following the surgery, his back pain was worse than his knee pain. He was treated for both problems with pain management treatments. Mr. Mickell continued to play football for the NFL.

In 1996, Mr. Mickell had surgery on his right shoulder due to an injury sustained during the years he played with New Orleans. In 1999, he injured his left hip while playing for the San Diego Chargers. His hip was drained several times, but the pain never resolved and became worse as he continued to play.

Throughout the last two years of his career Mr. Mickell was given cortisone shots and other pain numbing injections to alleviate the pain in his back, knees and hips; and he was also prescribed inflammatory medications to be taken daily. While the medication and injections numbed his pain enough to allow Mr. Mickell to play another two years; by the end of 2000 he was forced to stop playing due to significant pain and limitations. At that time it also became apparent that he suffered cognitive deficiencies as the result of his years in the game. He had noticeable short term memory loss, great difficulty staying focused, problems controlling his emotions and anger, and chronic headaches.

Unfortunately, time away from the game and a sedentary lifestyle did not improve his physical or mental condition. For years after leaving the NFL, Mr. Mickell could not work in any capacity due to daily, constant headaches, as well as severe pain and limitations in both shoulders; chronic, stabbing pain down his back; constant hip pain; and achiness in both knees. Over the next few years the pain worsened and he had great difficulty just functioning and getting through the day. Mr. Mickell's cognitive functionality deteriorated as well.

In April 2012 due to family obligations, Mr. Mickell felt he had no choice but to find work. He attempted to work for about 1 ½ years and finally had to stop due to physical pain and weakness as well as his cognitive limitations. It should be noted that prior to beginning his football career with the NFL, Mr. Mickell was a college student at the University of Florida. He took great pride in his studies and did rather well as he had a good memory and no problems with focus and concentration.

The logo consists of the letters 'R' and 'G' intertwined in a stylized, blocky font.

RBM 05/14/2015

MICKELL-0998

A1114

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

### Long Term Disability Plan Language

Under the clear, express terms of the Plan Mr. Mickell is entitled to total and permanent disability benefits because he is substantially prevented from and substantially unable to engage in any occupation or employment for remuneration or profit; his condition is permanent; and his total and permanent disability is football degenerative as it arose out of League football activities and while he was an *active Player* with the NFL.

Relevant Provisions from the Plan include the following:

#### **5.1. Eligibility**

*An Eligible Player whose application for total and permanent disability ("T&P") benefits is received by this Plan on or after September 1, 2011, who is determined by the Retirement Board or the Disability Initial Claims Committee to be totally and permanently disabled in accordance with Section 5.2, and who satisfies the other requirements of this Article 5, will receive a monthly T&P benefit in the amount described in Section 5.5 for the months described in Sections 5.8 and 5.9*

#### **5.2 Determination of Total and Permanent Disability**

*(a) General Standard. An Eligible Player who is not receiving monthly retirement benefits under Article 4 or 4A will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds (1) that he has become **totally disabled** to the extent that he is **substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit**, but expressly excluding any disability suffered while in the military service of any country, and (2) **that such condition is permanent**. The educational level and prior training of a Player will not be considered in determining whether such Player is "unable to engage in any occupation or employment for remuneration or profit." **A Player will not be considered able to engage in any occupation or employment for remuneration or profit** within the*



RBM 05/14/2015

MICKELL-0999

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

meaning of this Section 5.2 **merely because such person** is employed by the League or an Employer, manages personal or family investments, is employed by or associated with a charitable organization, is employed our out benevolence, or **receives up to \$30,000 per year in earned income**. A disability will be deemed to be **"permanent"** if it has persisted or is expected to **persist for at least twelve months from the date of its occurrence**, excluding any reasonably possible recovery period.

### 5.3 Classification

Each Player who is determined to be totally and permanently disabled in accordance with Section 5.2 will be awarded benefits in one of the four categories below.

- (a) Active Football. Subject to the special rules of Section 5.4, Players will qualify for benefits in this category if the disability(ies) results from League football activities, arises while the Player is an Active Player, and causes the Player to be totally and permanently disabled "shortly after: the disability first arises.
- (b) Active nonfootball. Subject to the special rules of Section 5.4, Players will qualify for benefits in this category if the disability(ies) does not result from League football activities, but does arise while the Player is an Active Player and does cause the Player to be totally and permanently disabled "shortly after: the disability(ies) first arises.
- (c) Inactive A. Subject to the special rules of Section 5.4, Players will qualify for benefits in this category if a written application for T&P benefits or similar letter that began the administrative process that resulted in the award of T&P benefits was received within fifteen (15) years after the end of the Player's last Credited Season. This category does not require that the disability arise out of League football activities.
- (d) Inactive B. All players who are determined to be totally and permanently disabled in accordance with Section 5.2 but who do not qualify for categories (a), (b), or (c) above will be awarded



RBM 05/14/2015

MICKELL-1000

A1116



Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

benefits in this category. This category does not require that the disability arise out of League football activities.

- (e) "Shortly After" Defined. A Player who becomes totally and permanently disabled no later than six months after a disability(ies) arises will be conclusively deemed to have become totally and permanently disabled "shortly after" the disability(ies) first arises, as that phrase is used in subsections (a) and (b) above, and a Player who becomes totally and permanently disabled more than twelve months after a disability(ies) first arises will be conclusively deemed not to have become totally and permanently disabled "shortly after" the disability(ies) first arises, as that phrase is used in subsections (a) and (b) above. In cases falling within this six to twelve-month period, the Retirement Board or the Disability Initial Claims Committee will have the right and duty to determine whether the "shortly after" standard is satisfied.
- (f) "Arising out of League football activities" means a disablement arising out of any League pre-season, regular season, or post-season game, or any combination thereof, or out of League football activity supervised by and Employer, including all required or directed activities. "Arising out of League football activities" does not include, without limitation, any disablement resulting from other employment, or athletic activity for recreational purposes, nor does it include a disablement that would not qualify for benefits but for an injury (or injuries) or illness that arises out of other than League football activities.

#### **5.5 Amount of Monthly Benefit.**

An Eligible Player who is awarded T&P benefits will receive the following monthly amount for the months described in Sections 5.8 and 5.9. The monthly payment determined below will be offset by any disability benefits provided by an employer

RBM 05/14/2015

MICKELL-1001

A1117



Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

other than the League or an Employer, but will not be offset by worker's compensation.

(a) Amount. Unless modified by Sections 5.5(b), (c), (d), or (e) below, the amount of the monthly benefit will equal the sum of Total Credits including, if applicable, the Benefit Credit and any Legacy Credit for the Plan Year in which such total and permanent disability occurs.

(b) Minimum Amounts.

Category	Effective 9/1/2011	Effective 1/1/2016	
Active Football	\$4,000	\$4,000	
Active Non Football	\$4,000	\$4,000	
Inactive A	\$4,000	\$4,000	
Inactive B	\$4,167	\$5,000	

Under the terms of this Plan, if Mr. Mickell can provide sufficient evidence to show that as the result of League football activities he is unable to engage in any occupation or employment for remuneration or profit as specifically stated under Article 5 of the Plan, then he is entitled to Total and Permanent Disability Benefits. The information and documents contained in this Appeal Letter provide strong proof that due to the effects of the substantial injuries sustained by Mr. Mickell during his eight seasons with the NFL, he has remained totally and permanently disabled.

**The Disability Claims Committee has violated the Claims Procedure and Notice Requirements Under the Plan and ERISA**

Section 12.6 of the Plan sets forth the procedures that must be followed if a claim for disability benefits under Articles 5 and 6 of the Plan is wholly or partially denied. In

RBM 05/14/2015

MICKELL-1002

A1118

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

accordance with the Plan a *notice of adverse determination will be written in a manner calculated to be understood by the claimant and will set forth the following:*

- (1) The **specific** reason(s) for the adverse determination;
- (2) Reference to the **specific plan provisions** on which the determination is based;
- (3) A description of additional material or information, if any, needed to perfect the claim **and the reasons such material or information is necessary**;
- (4) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under ERISA section 502(a) following an adverse benefit determination on review;
- (5) Any **internal rule, guideline, protocol, or other similar criterion relied on in making the determination**, (or state that such information is available free of charge upon request);
- (6) If the determination was based on a scientific or clinical exclusion or limit, an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's circumstances (or state that such explanation is available free of charge upon request).

The Claimant will have 180 days from the receipt of an adverse determination to file a written request for review of the initial decision to the Retirement Board.<sup>4</sup>

According to the Retirement Plan documents provided at Mr. Mickell's request, the Plan may also be guided by ERISA which too sets certain **minimum** requirements for procedures and notification when a[n] . . . administrator denies a claim for benefits.<sup>5</sup>

<sup>4</sup> As noted, Mr. Mickell filed his written request for review in a timely manner and was provided additional time to submit documentation in support of his Appeal and right to total and permanent disability benefits under the Plan.

<sup>5</sup> ERISA sets certain **minimum** requirements for procedures and notification when a[n] . . . administrator denies a claim for benefits. ERISA requires that specific reasons for denial be communicated to the claimant and that the claimant be afforded an opportunity for 'full and fair review' by the administrator. Section 1133, 29 U.S.C. § 1133, reads as follows:

In accordance with regulations of the Secretary, every employee benefit plan shall-

- (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the **specific reasons for such denial**, written in a manner calculated to be understood by the participant, and

RBM 05/14/2015

MICKELL-1003

A1119

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

The Denial Letter is lacking on its face in terms of complying with these clear notice requirements. It merely cites portions of some of the relevant plan provisions and includes a 3 sentence discussion as to why benefits were denied. Specifically, Mr. Scott stated the following as the **sole** reason for the denial of benefits by the Disability Initial Claims Committee ("the Committee"):

---

(2) afford a **reasonable opportunity** to any participant whose claim for benefits has been denied **for a full and fair review** by the appropriate named fiduciary of the decision denying the claim."<sup>5</sup>

The *minimum* claims procedure requirements under ERISA set forth the following requirements for the notification of an adverse benefit determination"<sup>5</sup>:

(1) [T]he plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination . . . . The notification *shall* set forth, in a manner calculated to be understood by the claimant --

(i) The *specific* reason or reasons for the adverse determination;

(ii) Reference to the *specific plan provisions* on which the determination is based;

(iii) A description of *any* additional material or information necessary for the claimant to perfect the claim *and an explanation of why such material or information is necessary*;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan or a plan providing disability benefits,

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request . . . .

The Courts make clear that these *minimal* claims procedure requirements under ERISA "*are designed to afford the beneficiary an explanation of the denial of benefits that is adequate to ensure meaningful review of that denial.*" *Halpin*, 962 F.2d at 689 (citing *Brown v. Retirement Committee of Briggs & Stratton Retirement Plan*, 797 F.2d 521 (7th Cir. 1986) when it goes on to state "[t]he persistent core requirements of review intended to be full and fair including knowing what evidence the decision-maker relied upon, having an opportunity to address the accuracy and reliability of that evidence, and having the decision-maker consider the evidence presented by both parties reaching and rendering his decision."). In determining whether an administrator has complied with ERISA's claims procedure requirements, the Court asks, "*[w]as the beneficiary supplied with a statement of reasons that, under the circumstances of the case, permitted a sufficiently clear understanding of the administrator's position to permit effective review?*" *Schneider*, 422 F.3d at 628 (citing *Halpin*, 962 F.2d at 690).

RBM 05/14/2015

MICKELL-1004



Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

*On September 27, 2013 the Committee denied your application for T&P benefits because you are currently employed. The Committee determined that your current employment is not associated with the League or an Employer, personal or family investments, a charitable organization, or out of benevolence. Therefore, the Committee found that you are not totally and permanently disabled under the Plan section 5.2(a).*

What the Committee failed to consider or confirm is whether or not Mr. Mickell had received (or would likely receive) in excess of \$30,000 per year in earned income. Had the Committee contacted Mr. Mickell's employer regarding his earnings they would have learned that he was expected to earn less than \$30,000 per year in earned income. As that appears to be the only basis for the denial of benefits, arguably, Mr. Mickell only has to show that he received less than \$30,000 per year in earned income in order for his benefits to be approved. However, in an abundance of caution, Mr. Mickell is also submitting medical information confirming that he is substantially prevented from and substantially unable to engage in any occupation or employment for remuneration or profit; his condition is permanent; and his total and permanent disability is football degenerative as it arose out of League football activities and while he was an active Player with the NFL..

#### MR. MICKELL RECEIVED LESS THAN \$30,000/YEAR IN EARNED INCOME

At the time of his disability, Mr. Mickell was employed by Freight Handlers, LLC in the Publix Deerfield Distribution Center in Deerfield.<sup>6</sup> As indicated in the letter from Lisa Howard, Human Resources Generalist for Freight Handlers, LLC, Mr. Mickell worked between 30 and 40 hours each week. What Ms. Howard did not include in her correspondence was Mr. Mickell's hourly wage and the number of times he was absent from work or had to leave early as the result of the injuries he sustained while a player for the NFL. Moreover, the Committee had in its possession an Earnings Statement from August 15, 2013 which showed that as of August 8, 2013 Mr. Mickell had earned \$17,221.65.<sup>7</sup> That averages to approximately \$538.17 per week in earned income. In light of the fact that there were less than 22 weeks left in the year and Mr. Mickell explained in his application for T&P benefits that he was not able to work as the result of his injuries, it appeared quite likely that Mr. Mickell would not earn an additional \$12,778.35 by the end of the year.

<sup>6</sup> Correspondence from FHI, LLC verifying his employment is attached to this Appeal Letter as Exhibit "4".

<sup>7</sup> A copy of the ADP Earnings Statement for Pay Period ending 08/15/2013 is attached to this Appeal Letter as Exhibit "5".

RBM 05/14/2015

MICKELL-1005

A1121



Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

Mr. Mickell's tax return shows that he earned only \$23,535 in 2013. In 2012 he earned \$21,886.00, significantly less than the \$30,000 per year threshold.<sup>8</sup>

#### MEDICAL REVIEW

As the direct result of injuries sustained while an active member of the National Football League, Mr. Mickell sustained significant injuries resulting in symptoms, restrictions, and limitations which have prevented him from being able to substantially engage in any occupation or employment for remuneration or profit (up to \$30,000.00 per year). Following is a detailed breakdown of those symptom's, restrictions and limitations:

- Memory problems
- Inability to concentrate
- Word Loss
- Problems with focus
- Problems processing information and following directions
- He tires easily – due to chronic pain, headaches, and inability to sleep due to pain and racing mind
- Chronic headaches – daily. Nothing really helps. Some days they are worse than others. He can't figure out what sets them off, they just come and go
- Neck pain down the middle of his neck – worse with activity. It's always there, but if he is active then the pain becomes debilitating.
- Bilateral shoulder pain - surgery on both shoulders from time in NFL. Reaching overhead is extremely difficult and painful. Also, lacks range of motion.
- Low Back Pain – chronic and its always achy, but the pain is unbearable at times. After being out or at work for several hours the pain became excruciating. He was sent home early a few times due to pain and his inability to perform any work activity.
- Left Hip Pain which makes walking and standing painful. Sharp pains in his hip that "buckle" him.
- Sitting for prolonged periods is very painful due to hip, low back and knee pain. Once pain hits very difficult to find relief. He needs to lie down often for several hours and take a muscle relaxant
- Bilateral knee pain. Chronic and severe all the times. Walking for a long time, going up and down steps and standing for too long results in unbearable pain and his knees will swell.

<sup>8</sup> A copy of Mr. Mickell's 2012 & 2013 tax returns are attached to this Appeal Letter as Exhibit "6".

RBM 05/14/2015

MICKELL-1006

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

- A number of dislocated fingers make it difficult to grasp and use his right hand for anything involving fine motor skills.

Mr. Mickell's application for Total and Permanent Disability Benefits provides the following conditions that prevent Mr. Mickell from working: (1) knees (bilateral) – no cartilage, stiffness and occasional swelling; (2) Right hip – major pain and numbness; (3) lower back; and (4) Shoulders (bilateral) – pain. Mr. Mickell's claim also provides that the injuries to his knees, hip and lower back occurred while playing football. The evidence also supports that Mr. Mickell's shoulder injuries were caused by playing football.

Mr. Mickell was diagnosed with chondromalacia of the patella of his left knee in 1992. He also began to suffer from effusion and mild thinning of the cartilage. In 1994, he was diagnosed with bilateral chondromalacia of the patella. The records indicate that he continued to suffer from bilateral knee pain and stiffness throughout his career, suffering MCL and patella sprains in 1994 and 1996 respectively. The MRI conducted on April 5, 2014 showed small effusions in both knees as well as grade II osteochondral injuries.

In September of 2000, the records first indicate that Mr. Mickell complained of pain in his right hip, suggestive of chondromalacia in the hip. The records are silent regarding hip injury other than this one incident. An MRI of the left hip in April of 2014 shows an anterior left acetabular labral nondisplaced tear and mild osteoarthritic change in both hips.

In 1992, the KC Chiefs noted that Mr. Mickell had a history of back issues but provide no explanation for this statement and no further mention of any back pain is mentioned for two years. In 1994, he suffered a blow to his back during a game resulting in swelling of the lumbosacral paraspinal muscle. On June 26, 1996, Mr. Mickell was diagnosed with disc protrusion at the L4-L5 disc. In 1999, Mr. Mickell was suffering from lumbosacral strain, suggestive of degenerative disc disease. The April 2014 MRI shows disc herniation at the C5-C6, C6-C7, L4-L5, and L5-S1 discs. There was also disc desiccation at the C2-C3 and C3-C4 discs. C4-C5 showed a small disc/osteophyte bulge with early degeneration.

Mr. Mickell developed bilateral shoulder pain in 1993, including a right rotator cuff strain suffered in a game. In 1995, Mr. Mickell suffered a left shoulder injury resulting in tingling and numbness in his fingers and causing limited motion. An MRI revealed a tear of the posterior joint capsule and posterior glenoid labrum. He injured his right shoulder in training camp in August of 1997. An MRI suggested multi-directional instability, impingement syndrome, and partial tear of rotator cuff. He reinjured the shoulder in a game in 1997 straining the rotator cuff. In 1998, he had surgery on his right shoulder, causing him to miss the entire 1998 season. In 2000, he suffered a

RBM 05/14/2015

DE  
RG

MICKELL-1007

A1123



Mr. Mickell has also suffered a series of injuries to his ankles, foot, elbow, chest, hand, and wrist. Mr. Mickell's recent MRIs of his cervical and lumbar spine, both knees, and hip show that these injuries are still affecting him. It would be interesting to see an MRI of his shoulders as well. The most interesting point of all of this is that the NFL denied Mr. Mickell's benefits not based on his physical condition but summarily on the grounds that he was working at the time of his application in September of 2013.

### SUMMARY OF MEDICAL RECORDS BY BODY PART

- August 19, 1991 – Bilateral Knee MRI (University of Florida)
  - MRI shows bilateral osteophytosis of femur at patella femoral joint with bilateral joint effusion and signal changes within the patellar cartilage and subchondral bone consistent with patellar chondromalacia.
- August 22, 1991 – Arthroscopy, Chondroplasty, and Patellofemoral Articulation of the Left Knee
  - Postoperative diagnosis of severe patellofemoral degenerative changes, Grade III and Grade IV.
  - The majority of both the facets of the patella and the trochlear area was covered with Grade III and Grade IV changes of chondromalacia.
- January 23, 1992 – MRI of Left Knee (University of Florida)
  - MRI shows that anterior horn of the medial meniscus is torn.
- February 14, 1992 – Left Knee Arthroscopy With Arthroscopic Plica Excision
  - Postoperative diagnosis of superomedial plica of the left knee and grade II/III chondromalacia of the patella.
  - Operation was performed as a result of meniscus tear diagnosis from MRI (1.23.92). There was no tear, but there was chondromalacia of the patella.
- August 26, 1992 – KC Chiefs Orthopedic Examination
  - Diagnosed with chondromalacia of the patella.
- October 4, 1992 – MRI of Left Knee

RBM 05/14/2015



Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

- Showed small amount of fluid in the tibiofemoral joint, intermediate signal intensity within the posterior horn of the medial meniscus, and an osseous ridge projecting off the anterior margin of the medial femoral condyle, extending onto the medial trochlear facet.
  - Diagnosed with moderate thinning of the articular cartilage of the median ridge of the patella and thickened medial shelf.
- October 14, 1992 – Training Room Exam
  - Still has the Patellofemoral Crepitus, graded at about 2+ primarily as the knee is brought from extension down into about 20-30 degrees of flexion.
  - Effusion measures 1 ¼ cm – greater on the left knee than that of the right knee.
- April 19, 1994 – KC Orthopedic Examination
  - Also diagnosed with bilateral chondromalacia patella.
- September 4, 1994 – KC Chiefs Injury Report
  - Suffered a MCL Knee sprain of the right knee when he was making a tackle on the ball carrier.
  - Also may have suffered a medial femoral condyle contusion.
  - Placed in a single bar brace splint immobilizer and had tenderness in his medial femoral epicondyle.
- February 13, 1995 – KC Chiefs Injury Report
  - Also continues to struggle with aching, tenderness, grinding and grating about both knees. There is persistent crepitus through the patellofemoral joint, and crepitus and grating through the lateral compartment of both knees. There is intermittent popping, catching and grinding. Indicates chronic synovitis with patellofemoral arthrosis that is noted to be Grade III perhaps even Grade IV.
- April 5, 1995 – KC Injury Report
  - Had arthroscopic surgery on both knees in March but still experiences some grating and grinding about both knees, more so with the left knee. There is still some very mild peripatellar crepitus, 1-2+ in the left knee.
- April 26, 1996 – New Orleans Saints Injury Report
  - Has a history of two knee arthroscopies on the right side, and three arthroscopies on the left.
- June 4, 1996 – Orthopaedic Exam
  - Also has pain in left knee and right little finger – dislocated finger in September of 1995 and there is a deformity in the finger since this time.
  - Left knee reveals slight varus – tender to palpation about the patellofemoral joint; has 2+ patellofemoral crepitus of both knees.
  - X-Rays of the left knee show some slight ridging of the articular surface, laterally, and some tilting of the patella, laterally.
  - Right knee shows some calcification off the medial femoral condyle consistent with an old Pellegrini-Stieda disease.

RBM 05/14/2015

DE  
RC

MICKELL-1009

A1125



Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

- Has chondromalacia of the patella, worse in the left knee and early degenerative changes of a mild degree in the left knee.
- August 21, 1996 – Training room Visit, New Orleans Saints
  - Mild to moderate patellofemoral crepitus – suggested avoidance of squats.
- September 5, 1996 – Training room Visit, New Orleans Saints
  - Injury to right knee – was hit in the game
  - Exam shows little thickening of the knee, some pain or tightness with flexion.
  - Has a contusion with slight swelling.
- December 18, 1996 – Training room Visit, New Orleans Saints
  - Suffered hyperextension of his left knee resulting in strain of the patellar tendon.
- September 15, 1999 – Orthopaedic evaluation for New Orleans Saints
  - Suffers from chondromalacia patella, advanced in left knee, moderate in right knee.
  - Cleared to play football. Biggest concern would be the left knee.
- January 14, 2000 – San Diego Chargers Free Agent Physical
  - X-rays showed mild lateral patellar joint space narrowing and mild intercondylar osteophyte formation in both knees.
- October 15, 2000 – Left Knee Inflammation
- December 10, 2000 – Right Knee Medial Collateral Sprain
- July 29, 2011 – Oakland Raiders Injury Report
  - Complains of left knee pain from a probable contusion, chondromalacia, possible meniscal tear left knee.
- July 30, 2011 – Oakland Raiders Injury Report
  - Complains of left knee.
  - There is posteromedial joint tenderness with some pain with McMurray's.
  - Underlying degenerative joint disease and possible meniscal degeneration.
- April 5, 2014 – MRI of the Right Knee
  - Showed grade II strain of the distal biceps femoris muscle and tendon
  - Mild patellofemoral compartment osteoarthritic change. Early medial and lateral compartment osteoarthritic change is present as well.
  - Medial distal femoral metaphyseal 0.9 x 1.7 cm benign exostosis.
  - Medial meniscal postsurgical change without recurrent meniscal tear demonstrated.
  - Small right knee effusion
- April 5, 2014 – MRI of Left Knee
  - Mild patellofemoral compartment osteoarthritic change. Early medial and lateral compartment osteoarthritic change is present as well.
  - Anterior medial femoral condyle 1.2 x 1.4 cm chronic grade II osteochondral injury.

RBM 05/14/2015

MICKELL-1010

Claimants name: Darren Mickell  
Appeal of T&P Benefit Denial

- Small left knee effusion.
- 2.0 x 2.9 x 4.3 cm ganglion cyst within the posterior intercondylar region, along the posterior margin of the posterior cruciate ligament.

#### Hip

- September 7, 2000 – MRI of Right Hip
  - Been experiencing pain for five days.
  - There is a small effusion in the right hip joint and there may be low-grade chondromalacia affecting the posterior aspect of the joint.
- April 5, 2014 – MRI of Left Hip
  - Anterior left acetabular labral nondisplaced tear.
  - Mild – moderate bilateral hip osteoarthritic change, greater on the left.

#### Back/Neck

- August 26, 1992 – KC Chiefs Orthopedic Examination
  - Noted history of low back pain, but asserted that he would pass physical.
- January 3, 1994 – KC Chiefs Post-Game Injury
  - Suffered blow to low back area in game against Seattle Seahawks.
  - Day after there was swelling along the paraspinal muscle area adjacent to the SI joint and lumbosacral region of L5-S1 area.
  - Indicates a contusion in the lumbosacral paraspinal muscle and sprain of the right SI joint.
- October 30, 1994 – KC Chiefs Post-Game Injury
  - Suffered an injury to his right anterior sternocleidomastoid area in game against Buffalo Bills.
  - Indicated a contusion to anterior sternocleidomastoid resulting in soreness without swelling.
- August 19, 1995 – KC Post-Game Injury
  - Sustained injury to his posterior lateral neck region during Buffalo Bills game. Indicated acute posterior lateral cervical muscle strain causing discomfort to trapezius musculature.
- June 4, 1996 – Orthopaedic Exam
  - Developed back pain during the rookie camp and aggravated it during mini-camp. Complains of sharp pain in left low back radiating toward his left buttock.
  - Left lower lumbar area is tender to palpation.
  - Straight leg raise examination caused some low back pain bilaterally at about 70 degrees.
- June 26, 1996 – Physical Therapy Evaluation
  - Diagnosed with L4-L5 disc protrusion.
  - Demonstrates decreased
    - Postural awareness
    - Lumbar spine range of motion compared to AMA guidelines

RBM 05/14/2015

RG

MICKELL-1011

A1127

Claimants name: Darren Mickell  
*Appeal of T&P Benefit Denial*

- Pelvic/lower extremity flexibility
  - Trunk/pelvic strength
- Specified tenderness along the right lumbar paraspinals and quadratus lumborum musculature.
- September 15, 1999 – Orthopaedic evaluation for New Orleans Saints
  - Has a history of recurrent lumbosacral strain – he probably has a degenerative lumbar disc.
- July 25, 2000 – Lumbar Erector Spinae Strain
- April 12, 2014 – MRI of Cervical Spine
  - C5-6 central disc herniation which impinges upon thecal sac, narrowing the central canal.
  - C6-7 central disc herniation which impinges upon thecal sac, narrowing the central canal.
  - Straightening of the normal cervical lordotic curve, possibly secondary to muscle spasm.
  - C2-3 and C3-4 early disc desiccation.
  - C4-5 early degenerative change with a small disc/osteophyte bulge.
- April 12, 2014 – MRI of Lumbar Spine
  - L4-5 central broad-based disc herniation which impinges upon the anterior thecal sac, narrowing the neural foramina bilaterally.
  - L5-S1 central broad-based disc herniation which impinges upon the anterior thecal sac, narrowing the neural foramina bilaterally. An associated annular tear is present.

#### Shoulders

- May 17, 1993 – KC Chiefs
  - X-rays of right shoulder showed a type II acromion and slight irregularity of his anterior humeral head.
  - This suggests possible shoulder subluxation and possible labral pathology of the right shoulder.
- July 23, 1993 – KC Chiefs Training Camp
  - Developed bilateral shoulder pain without history of a specific injury. Noted general soreness with any shoulder motion that was aggravated by football activities.
  - Pain was confined to pectoralis major and latissimus attachments on the humeral area suggestive of probable pectoralis major and possible latissimus strain.
- July 30, 1993 – KC Chiefs Injury Report
  - Suffered a rotator cuff strain in right shoulder when his arm was pulled down while being blocked by opposing player.
- July 30, 1993 – MRI of Right Shoulder

RBM 05/14/2015



MICKELL-1012